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THE GOOD PUBLIC ADMINISTRATION IN THE XXI CENTURY: ANALYSIS OF THE COLOMBIAN CASE

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ABSTRACT

The article aims to identify the meaning of the concept of good Public Administration in the 21st century and its impact on Administrative Law, with emphasis on the Colombian case. The paper makes some precisions on the origins of Administrative Law in the liberal State, to then contrast these characteristics with Administrative Law and good Public Administration in the constitutional and democratic rule of law of the 21st century. It makes a presentation of the legal content of the fundamental right to a good Public Administration and its main characteristics in accordance with the scholarship and the main legal documents dealing with the subject, such as the Ibero-American Charter of the Rights and Duties of the Citizen in relation to Public Administration of 2013 and the European Charter of Fundamental Rights of 2000. Finally, the article describes how this new concept is applied in Colombia, reporting some experiences adopted in that country with the aim of improving the quality of public management.

Keywords: good public administration; XXI century; transformations of Administrative Law; fundamental rights; Colombian Administrative Law.

LA BUENA ADMINISTRACIÓN PÚBLICA EN EL SIGLO XXI: ANÁLISIS DEL CASO COLOMBIANO

RESUMEN

El artículo tiene el objetivo de identificar el significado del concepto de buena Administración Pública en el siglo XXI y sus impactos en el Derecho Administrativo, con destaque para el caso colombiano. El trabajo realiza algunas precisiones sobre los orígenes del Derecho Administrativo en el Estado liberal, para luego contrastar estas características con el Derecho Administrativo y la buena Administración Pública *en el Estado Constitucional y Democrático de Derecho del siglo XXI. Hace una presentación del contenido jurídico del derecho fundamental a una buena Administración* Pública y sus *principales características de acuerdo con la doctrina y los principales documentos jurídicos que tratan del tema, como la Carta Iberoamericana de los Derechos y Deberes del Ciudadano en relación con la Administración Pública de 2013 y la Carta Europea de Derechos Fundamentales de 2000. Finalmente, el artículo describe cómo se aplica en concreto este nuevo concepto en Colombia, relatando algunas experiencias adoptadas en ese país con el objetivo de mejorar la calidad de la gestión* pública.

Palabras-clave: *buena administración pública; siglo XXI; transformaciones del Derecho Administrativo; derechos fundamentales; Derecho Administrativo colombiano.*

INTRODUCTION

At present, the right to good administration is a concept that is becoming increasingly important due to the necessary transformation the public administration must do to improve its relationship with citizens and deliver better goods and services that promote the general interests of the communities. The concept is not new, since always, in theory, the Public Administration has aimed at promoting the general interest of all citizens. But in the 21st century, the right to good administration acquires new connotations, due to the need to strengthen democratic processes in all States, improving citizen participation and accountability, together with the protection of rights fundamentals of all individuals, in a globalized and interconnected world.

Here it is important to note that since the beginning of the modern State, Administrative Law has been one of the main tools with which governors and governed have at the time of materializing the forms of government established in the Constitution and laws (KRISTJÁNSDÓTTIR, 2013, p. 237-255). The way in which these general postulates materialize changes in each epoch, depending on multiple historical and cultural variables that condition the interpretations of public officials and citizens.

In this order of ideas, the right to good administration represents a "new-generation right-guarantee" (CARRILLO DONAIRE, 2010, p. 1152), which seeks to make explicit the coherence that must exist between the Constitution and the legal system internal, in Democratic and Social States of Law, with the purpose of positively impacting the relationship between the State and individuals.

At first sight, this new law may seem more of the same, but as Professor Jaime Rodríguez-Arana (2013) clearly points out, underlining the importance of good administration refers to the contrast that exists with the previous experience of Public Administrations that they have not served the people, nor have they done so objectively in the general interest.

Thus, taking into account the contrast pointed out by Professor Rodríguez-Arana[1], this article aims to contrast the foundations of good public administration in the beginning of the modern state, compared to what is nowadays understood as good public administration in the 21st century.

1 For an in-depth look at the author's thought on the subject, see: RODRÍGUEZ-ARANA MUÑOZ, 2012a; RODRÍGUEZ-ARANA MUÑOZ, 2012b; RODRÍGUEZ-ARANA MUÑOZ, 2012c; RODRÍGUEZ-ARANA MUÑOZ, 2010; RODRÍGUEZ-ARANA MUÑOZ, 2007.

To develop this comparative analysis, the work will then make some clarifications about the origins of Administrative Law in the liberal State, to then contrast these characteristics with Administrative Law and good public administration in the Constitutional and Democratic State of Law. In the following section some precisions will be presented on the general notions of good Public Administration in the XXI century. Afterwards, the main characteristics that Good Public Administration must have will be analyzed, in order to later describe how this new concept is applied in Colombia. In the conclusion some considerations for future investigations will be presented.

2 ORIGINS OF ADMINISTRATIVE LAW IN THE LIBERAL STATE

The consolidation of the modern state was a long process that required several centuries of struggles and alliances between nobles and bourgeois to centralize power, declaring also the autonomy of the monarch in front of the church. This is because the Middle Ages were characterized by the dispersion of power in various authorities, causing the existence of diverse normative bodies, jurisdictions and courts with varying degrees of legitimacy in the communities (TAMANAHA, 2008, p. 375-411). To centralize all the power at the head of the State, two fundamental aspects should be highlighted here: the first is the centralization of the power to make laws in the State, and the second, not least, is the consolidation of an administrative apparatus that Represents the State and has as its objective to enforce the law, collect taxes, judge, among others.

For Weber (2012, pp. 78-79), one of the main characteristics of the modern state is that it institutionalizes a new type of legal domination that rests on the validity of a right, rationally established, in such a way that the members of the organization when they obey the leader "they do not obey his person but the impersonal order, and therefore they are only obliged to render obedience within the scope of the objective competences rationally delimited by the ordering".

In this sense, the beginning of the modern state is characterized by the rationalization of power, which facilitated the expansion of administrative structures according to the hierarchical and centralized model (which is a legacy of the former monarchical regime), gradually reinforcing administrative techniques and expanding the power of bureaucracies, according to the needs of the moment (RODRIGUEZ-

ARANA, 2009, p. 33). At this time, the urgent need for order and legal security helped to consolidate the administrative structures under the key of unity of command (BOBBIO *et al*, 2010, p. 430), with officials able to establish the last decision in a unidirectional way, this is, without allowing greater participation of citizens. In this regard, Alexis de Tocqueville (2010) in his book on the Old Regime and the Revolution states: "I say that centralization is a great achievement and I agree that Europe envies us, but I maintain that it is not at all a conquest of the Revolution. It is, on the contrary, a product of the Old Regime, and I will also add that it is the only thing in the political constitution of the Old Regime that has survived the Revolution, because it was the only thing that could accommodate the new social state that this Revolution created."

Consequently, in this initial stage of the State, good administration is related to the centralization of power, through the existence of an administrative body with the capacity to comply with and enforce the law to guarantee the order and legal security required by the communities; where one of the priorities was to avoid at all costs the disrespect for the principles of freedom and equality of all citizens, proclaimed by the Revolution, in order to end the old privileges of the nobles under the Old Regime.

For this reason, Giannini (2010, p. 67) states that, from a political point of view, Administrative Law is linked to authoritarianism because the authoritarian nature of administrative action in relation to citizens is a legal technique that was born for political reasons in the bourgeois state. It is important, however, to perceive that if the political reality before and after the French Revolution was equally authoritarian, this does not mean that it remained authoritarian in the same way[2].

The authoritarian character of Administrative Law is going to manifest itself more clearly in Continental Europe in the 19th century, because the discourses on rights and freedoms are based more on the State and its right than on the Constitution and the fundamental rights of citizens (FIORAVANTI, 2007, p. 108), leading to the limitation of the State by Law confused with the rule of law created by Parliament. In this context, to speak of the centrality of the dignity of the human being to justify the decisions of the Public Administration is a whole utopia.

Thus, a good public administration is one that guarantees rational domination through continuous organization and regulated by official

2 On the subject, see: GABARDO; HACHEM, 2010.

positions, which not only must ensure the specialized training of public officials to perform the job, but must also objectively delimit the areas of competence, determining the distribution of obligations and the hierarchy of the positions for the purpose of exercising controls and effective supervision over the activities carried out by the entire bureaucratic apparatus (WEBER, 2012, p. 79-81).

Under the rational perspective, the Law that governs the State is built on the basis of the great dichotomy between the public and the private; between equal and unequal. Thus, the State, represented by its Public Administration, is characterized by maintaining unequal relations, that is, relations of subordination between governors and the governed, between those who have the power to rule and those who have the duty to obey (BOBBIO, 1989, p. 15).

In this order of ideas, the Administrative Law seen as a Right of the State is created based on the idea of superiority of the State and its sovereign power over society. In contrast to the State, relations are presented in society (natural society as described by *ius-naturalists*, or market society in the idealization of classical economists), which are characterized by belonging to the private sphere, and, for therefore, they are relationships between equals or coordination; they are relations regulated by the Civil Code, as Law based on the equality of individuals belonging to society (RODRIGUEZ-ARANA MUÑOZ, 2009, p. 16).

Administrative Law as a positive State Law, based on the ideology of liberal statism, although it is not a codified Law (like Civil Law), is a Law created as a closed and self-sufficient system, endowed with its own specific institutions and general principles elaborated by legal science. Administrative Law exists because the Public Administration[3] needs its own specific law based on the sovereign power of the State at a higher level than the law of civil society. For this reason, it can not be admitted that the State as Administration submits itself to an ordinary civil legal regime with its authority (FIORAVANTI, 2007, p. 111).

Additionally, the creation of a closed and self-sufficient system, special for the Public Administration, ensured that the Administration would always be subordinated to the law, and therefore, all the acts would comply with the principle of legality, fundamental to protect the rights of citizens without the need to appeal to the judges. In this way, it was

3 Here the Public Administration is understood in its broadest sense, that is, as the body in charge of developing the set of activities directly designated to the concrete execution of tasks considered to be of public or common interest, in a community or state organization. BOBBIO *et al*, 2012, p. 10

considered that the application of the norm to reality was an automatic procedure, that is, free of any subjective or political assessment by the competent public official.

For Weil (1977, pp. 12-13), in establishing the principle of separation of powers between administrative and judicial authorities[4], it sought to prevent the courts from disrupting the Administration and, for this, in this first stage of the liberal state, the knowledge of litigation where the Public Administration was a party was prohibited . The judiciary, whose natural mission was to settle litigation by declaring the right, was weakened and diminished, since the mistrust of disturbing the operations of the administrative bodies was such that the administrative judge himself avoided opposing the Administration. Thus, a judicial power incapable of judging the Administration is a judicial power that does not have autonomy and independence for the protection of the fundamental rights of citizens.

In this way, Administrative Law becomes the positive Law of the State, which represents the State's own authority, what is done by placing the nucleus of sovereign public power in the State, that is, beyond the Constitution, in an area that can not and must not be reached by individuals. Still this power of the State is understood as non-arbitrary, because it is a standardized power that aims to generate rules applicable to all, seeking legal security both within society and within administrative structures, through the certainty of the right (FIORAVANTI, 2007, p. 111-112). In the Liberal State of Law, Public Administration has a marginal and subsidiary function, although for many theorists it exercises an irreplaceable role as a bridge between society and the State (BOBBIO et al, 2012, p. 431).

For Pietro Costa (2008, p. 66), the construction of the State as a command apparatus during the police period allowed the State to be kept away from society, although apparently it was intended to inform and encourage development. Therefore, the State and society are opposite dimensions, where the Prince's machine pursues the realization of own values that do not coincide with those of the society that commands.

The more mature doctrine of the Rule of Law will affirm that the rights of the individuals are based on a sovereign act of self-limitation of the State, since if the liberties are based on the norms of the State, it must be admitted that there is a fundamental right to be treated according to the laws of the State (FIORAVANTI, 2007, p. 11 8-120).

Administrative justice is a little effective remedy against the

4 On the subject, see: CORVALÁN, 2015, p. 225-256.

arbitrary acts of the Public Administration[5], because it was designed and structured so as not to compromise the basic principle of State sovereignty, since the Administration could not be involved in a trial between peers as any individual. Thus, in a political system based on principles of a statist character, it is difficult for the judge to be completely free to protect individual rights at times when they clash with the reasons of authority. The judge is not based on the Constitution when judging, but on the expression of sovereignty of the State, in such a way that it can not be a neutral third party (FIORAVANTI, 2007, p. 120). As Rodríguez-Arana (2009, p. 23) correctly points out, "Administrative Law was conceived in function of the Public Administration itself and under the necessary stability of good laws".

3 ADMINISTRATIVE LAW AND GOOD PUBLIC ADMINISTRATION IN THE CONSTITUTIONAL AND DEMOCRATIC STATE OF LAW

For Giannini, toward the end of the nineteenth century the liberal state enters into crisis, mainly because political rights should be recognized to wider strata of citizens, so that when universal suffrage is imposed, the sociological type of the State changes. Thus, a State of a single class moved to a State of plurality of classes, but this change was not perceived by the legal science of the time, which is demonstrated by the verification that the Constitutions almost everywhere continued immutable. This lack of understanding of social changes was answered by the State with nationalist policies that were characterized by administrative non-compliance with constitutional precepts (GIANNINI, 1991, p. 76-77).

At the beginning of the 20th century, with the arrival of the State of the plurality of classes in industrialized societies, the Public Administration began to provide various public services, such as railroads, telegraphs, education, public health, among others. According to Duguit, as the Public Administration expands and intervenes in more public services, citizens demand improvements in the provision of these services, due, in part, to the accelerated processes of industrialization of societies. Thus, for Duguit (1913), the main justification for the exercise of state power lies in the efficient and continuous provision of public services, not in gaseous

5 Currently, however, models of administrative justice have undergone many transformations and advances. In this sense, see: PERLINGEIRO, 2017, p. 167-205; ASIMOW, 2017, p. 129-165; CANE, 2017, p. 77-110 .

notions of sovereignty or natural rights.

In this way, to the extent that the Public Administration complies with the provision of public services, fulfills its mission (DURÁN MARTÍNEZ, 2015, pp. 39-62), without it being necessary to improve citizen participation in public affairs; It is understood that the Public Administration has all the competence to intervene and decide "objectively" because of its experience and the centralized management of the resources it has at the moment. In this regard, Professor Jaime Rodríguez-Arana (2013, pp. 23-56) states:

> Simply, the Administration was taken, during the apogee of the welfare state that I call static, by political groups and to it they have served almost exclusively. Instead of explaining and justifying his decisions, he locked himself in an ivory tower, and decided to close himself to the conscious society that the parties controlled the rest of the powers to camp, more or less, in impunity. In this context, the public Administration grew and grew under its umbrella all sorts of public structures emerged, most often subject to private law, to give shelter to the legion of personnel of political origin that had to be placed to repay services rendered. The manifestations of the bad public Administration did not wait.

In the twentieth century, administrative legislation must be revised according to the constitutional parameters seeking the effectiveness of rights. In this regard, Giannini (1991, pp. 76-77) considers that administrative legislation should have been revised in at least three senses. The first and most obvious, the Administrations had to execute the constitutional precepts that had been implicated fraudulently or simply unenforceably; the second, a social justice legislation had to be developed; and the third, the State had to intervene in the sectors where the political and economic power of the privileged classes could abuse their dominant position vis-à-vis society. In particular, the constitutional precepts that should have begun to be applied more effectively in Administrative Law were the fundamental rights, since evidently the exorbitant regime of the Administration allowed in many opportunities the transgression of the rights of the administered.

In each State, the reforms on the Public Administration were numerous, but the heavy authoritarian tradition that accompanies power

in the States has greatly hindered the effectiveness of the reforms. E n Consequently, the emphasis placed on the *right-guarantee good administration* seeks to contribute in building a solid theoretical framework that helps the cultural change required within States, to ensure the effectiveness of fundamental rights in all levels of government.

In this context, the Charter of Fundamental Rights of the European Union, approved in Nice in the year 2000, innovated by converting the *principle* - until then treated only from an objective perspective - into *fundamental law*, also granting it a subjective dimension that could be demanded (FUENTAJA PASTOR, 2008, p. 137) . It is at this point that the authors show their pioneering, identifying it as the first legal document to raise good administration to the *status* of genuine fundamental right of the citizen (SÖDERMAN, 2001, p. eleven; FERNÁNDEZ TOMÁS, 2001, p. 103) .

The proclamation of the Charter was the result of the need that was observed to accompany, in the field of Community Law, the strong tendency of the member states to ensure the protection of human rights in their internal Constitutions and in international treaties[6]. This is because respect for fundamental rights and freedoms is one of the foundations on which the supranational entity relies (RODRÍGUEZ BEREIJO, 2001, p. 11) . In Latin America, the Ibero-American Charter of Rights and Duties of the Citizen in relation to Public Administration also determines in the First Chapter "the recognition of the fundamental right of the person to good Public Administration and of its rights and duties as components" (CLAD, 2013).

Although the Charter is not binding on the signatory States, it is important because it provides valuable elements to interpret this new right. To better understand what the fundamental right to good Public Administration consists of, the following section will analyze the legal content and scope of this concept in the 21st century[7].

6 The Treaty of Lisbon signed on December 13, 2007, whose validity began in December 2009, incorporated through its art. 6th, 1, the Charter of Fundamental Rights of Nice to the normative set that governs the European Union, explicitly conferring the same legal value of the structuring treaties of the community entity.

7 For a more general perspective of the changes in Public Administration and Administrative Law in the 21st century, see: BITENCOURT NETO, 2017, p. 207-225; BACHILO; SHMAKOV, 2017, p. 11-21 and CORREIA, 2016, p. 66).

4 LEGAL CONTENT AND THE SCOPE OF THE RIGHT TO GOOD PUBLIC ADMINISTRATION IN THE 21ST CENTURY

For Professor Jaime Rodríguez-Arana (2013, pp. 23-56), good administration is a fundamental right that "brings with it a rethinking of administrative law", since the centrality of the citizen and his active participation in the conformation of the general interests pursued by the State suggests new models of public management that have an important impact on Administrative Law. This is because at present "citizens have the right to demand certain standards or standards in the operation of the administration " (RODRÍGUEZ-ARANA MUÑOZ, 2013, p. 23-56).

In Europe, the Charter of Fundamental Rights of the European Union of December 2000 explicitly established in article 41 the right to good administration (EUROPEAN UNION, 2000), and as a consequence there is currently abundant doctrine and jurisprudence[8] on how this principle grounds Community Law in various areas of Public Administration.

In particular, the aforementioned article stipulates that: "Everyone has the right to have the institutions and bodies of the Union treat their affairs impartially and fairly and within a reasonable time". According to the second paragraph, this right includes in "particular": (i) the right of every person to be heard before an individual measure that adversely affects them is taken against them, (ii) the right of every person to access to the file that affects him, respecting the legitimate interests of confidentiality and professional and commercial secrecy, (iii) the obligation incumbent upon the administration to motivate its decisions. Additionally, the third paragraph determines the right of reparation that every person has for the damages caused by the institutions of the Community, and the fourth paragraph indicates that every person can address the institutions of the Union in one of the languages of the Treaties and You must receive a reply in the same language. In the concept of Natalia Aprile (2017), Article 41 of the Charter is "an *umbrella provision* that includes several sub-rights and, as has been clarified in the jurisprudence of the European Court of Justice, its enumeration is not exhaustive because by using the expression" in particular 'the European legislator left the door open to other rights not listed'.

In this sense, the right to good administration comprises a set of rights that citizens have in democratic law states, which seek to ensure

8 On the jurisprudence on the subject, see: CUCULOSKA, 2018.

the proper use of power by the public administration and due controls by citizens[9]. This is recognized by Professor Jaime Rodríguez-Arana (2013, pp. 23-56) when he states:

> A good Public Administration is one that fulfills the functions that are proper to it in democracy. That is to say, a public administration that objectively serves the public, that carries out its work rationally, justifying its actions and that is continuously oriented to the general interest . A general interest that in the social and democratic State of Law resides in the permanent and integral improvement of the living conditions of the people.

In this way, the right to good administration seeks to consolidate a new way of governing, where the participation of citizens is fundamental to motivate the reason for being of the Public Administration activity. This is because, at present, governing can not be a unidirectional process of the rulers to the governed, as in past times, but it must be a bidirectional process, where broad and systemic interactions between the rulers and the governed continuously nourish the deciones public services within the communities (KOOIMAN, 2005).

In this context, the governments of Iberoamerica adopted the "Ibero-American Charter of the Rights and Duties of the Citizen in relation to Public Administration" at the XXIII Ibero-American Summit of Heads of State and Government, held in Panama City on the 18 and 19 of October 2013 (CLAD, 2013). The drafting of the Charter was entrusted by the Board of Directors of the entity to Professor Jaime Rodríguez-Arana Muñoz[10]. In the preamble of the Charter, good Public Administration is defined as "an obligation inherent to the Public Powers in virtue of which the public task must promote the fundamental rights of the people, promoting human dignity so that the administrative actions harmonize criteria of objectivity, impartiality, justice, fairness, and are provided within a reasonable time. "

The Charter emphasizes the centrality of the human being as the beginning and end of the State, determining also that good Public Administration has a triple functionality: (i) it is a *principle* of general

9 One of the control modalities is precisely the social control exercised by citizens. In this sense, see: BITENCOURT; BEBER, 2015, p. 232-253; BITENCOURT; PAESE, 2015, p. 293-311.

10 ADMINISTRATION A DAY. *Professor Rodríguez-Arana will write the Charter of Citizen Rights of Ibero-America.* 02/14/2013. Madrid, National Institute of Public Administration. Available at: <http:// laadministracionaldia. inap. es/noticia. asp?id=1500246>.

application of Administrative Law; (ii) it is an *obligation* of every Administration in particular, when promoting conditions of freedom and equality between individuals and groups in a real and effective way; and (iii) from the perpective of the person, it is also a genuine and genuine *fundamental right*, from which concrete rights are derived in favor of citizens, in order to guarantee the protection of human dignity in practice[11].

In this sense, the right to good administration is a theoretical framework that allows addressing the organizational problems (logistical, cultural, economic, etc.) that are presented in all Public Administrations, due to the operational difficulties that the work teams at the moment of guaranteeing the full enjoyment of fundamental rights, or at the time of allowing greater participation with the citizenship, or guaranteeing proper rendering of accounts; establishing as the North of the Public Administration the centrality of the human being as the beginning and end of the State.

The Ibero-American Charter is important because it provides an explanation of the meaning of this right, establishing in numeral 25 of Chapter Three that: "Citizens are holders of the fundamental right to good Public Administration, which consists in that matters of a public nature are treated with fairness, justice, objectivity, impartiality, being resolved in reasonable terms in the service of human dignity ". The same device establishes that its content, in particular, "consists, among others, of the rights indicated in the following articles, which may be exercised in accordance with the provisions of the legislation of each country. " The document managed to disintegrate the legal composition of this general right in the subsequent numerals of the same chapter.

In monographic work on the subject, prior to the preparation of the Charter, Professor Jaime Rodríguez-Arana - editor of the project - already threw out twenty-four legal principles that he considered to be central to the fundamental right to good Public Administration, whose obedience would be necessary for the latter will be considered respected[12]. It also

11 On said principle, see: MEZZAROBA; SILVEIRA, 2018, p. 273-293.

12 The author refers to the following principles, explaining immediately the content of each of them: 1. Principle of legality; two. Principle of objective service to citizens; 3. Promotional principle; Four. Principle of rationality; 5. Principle of equal treatment; 6 Principle of effectiveness; 7 Principle of publicity of the rules, of the procedures and of the entire administrative work within the framework of the respect of the right to privacy and of the reservations that for accredited reasons of confidentiality or general interest are pertinent in each case, in the procedures for the dictation of administrative acts; 8 Principle of legal security, predictability and normative certainty; 9. Principle of proportionality; 10 Principle of normative exercise of power; eleven. Principle of impartiality and independence; 12 Principle of relevance; 13 Principle of coherence; 14 Principle of good faith; fifteen. Principle of legitimate trust; 16 Principle of advice; 17 Principle of responsibility; 18 Principle of facilitation; 19 Principle of celerity; twenty. Principle of transparency and access to information of general interest; twenty-one.

determines thirty-one specific rights that derive from this right-synthesis, without prejudice to others, thereby demonstrating the extent of the protection granted by the citizen in his dealings with the Public Powers[13]. Most of the *principles and rights* derived from the fundamental right to Good Public Administration proposed in his book were incorporated into the Ibero-American Charter, respectively, in its Second Chapters (numerals 2 to 24) and Third (26 to 46). As can be seen, the document makes great progress in terms of the right under discussion, progressing beyond the timid list of rights initially proposed by the Charter of Fundamental Rights of the European Union (HACHEM, 2014).

The recognition of the right to good administration is justified because of three main reasons. The first, of a symbolic nature, because it emphasizes the nature of the service of the Public Power to the human person, with the intention of guaranteeing the full and effective realization

Principle of protection of privacy; 22 Principle of ethics; 2. 3. Principle of due process; 24 Principle of cooperation. RODRÍGUEZ-ARANA MUÑOZ, 2012a, p. 169-172.

13 The fundamental general right of citizens to a good public administration can finally be specified, among others, in the following subjective rights of administrative order: 1. right to the motivation of administrative actions; 2. right to effective administrative protection; 3. right to an administrative decision within a reasonable time; 4. right to a fair resolution of administrative actions; 5. the right to present written or oral requests in accordance with what is established in the regulations, physical or computer records; 6. right to timely and effective response from administrative authorities; 7. right not to present documents that are already in the possession of the public administration; 8. right to be heard always before measures are taken that may adversely affect them; 9. right to participate in administrative actions in which they have an interest, especially through hearings and public information; 10. right to fair compensation in the case of injury to property or rights as a result of the operation of public liability services; 11. right to public services and general interest of quality; 12. right to choose the services of general interest of their preference; 13. right to give an opinion on the operation of administrative liability services; 14. right to know the obligations and commitments of the administrative responsibility services; 15. right to make allegations at any time during the administrative procedure; 16. right to present complaints, claims and appeals before the Administration; 17. right to file appeals before the judicial authority without having to exhaust the previous administrative procedure, in accordance with the provisions of the laws; 18. right to know the evaluations of public entities and to propose measures for their permanent improvement; 19. right of access to the administrative files that affect them within the framework of the respect to the right to privacy and to the motivated statements of reservation that in any case shall specify the general interest in the specific case; 20. right to a rational and effective management of public archives; 21. right of access to information of general interest; 22. right to a sealed copy of the documents submitted to the public administration; 23. right to be informed and advised on matters of general interest; 24. right to be treated with courtesy and cordiality; 25. right to know the person responsible for processing the administrative procedure; 26. right to know the status of the administrative procedures that affect them; 27. right to be notified in writing or through new technologies of the resolutions that affect them in the shortest possible time, which shall not exceed five days; 28. right to participate in associations or institutions of users of public services or of general interest; 29. right to act in administrative procedures through a representative; 30. the right to demand the fulfillment of the responsibilities of the personnel at the service of the public Administration and of the individuals who perform administrative functions; 31. right to receive special and preferential care in the case of people with disabilities, children, adolescents, pregnant women or elderly people, and in general of people in a state of helplessness or manifest weakness ". RODRÍGUEZ-ARANA MUÑOZ, 2012a, p. 172-174.

of fundamental rights and the general interest[14]. The second reason, of a juridical nature, because it raises the postulates of good Public Administration to the level of fundamental right, even though in some countries such postulates are not expressly protected in the Constitutions (as, for example, the duties of good faith and effectiveness administrative) . The third reason, also of a legal nature, because it determines the possibility of enforceable compliance with the constitutional principles that govern the administrative function (HACHEM, 2014).

Taking into account the above considerations, the following will present the main characteristics that derive from good Public Administration according to Professor Jaime Rodríguez-Arana.

5 MAIN CHARACTERISTICS OF THE GOOD PUBLIC ADMINISTRATION

Based on the research of Professor Jaime Rodríguez-Arana (2013, pp. 23-56) on "Good governance as a principle and as a fundamental right in Europe", this section will be devoted to highlighting the six main characteristics that were identified by the Featured author.

The first deals with the centrality that a person must have within a democratic State of Law, where citizens must become active subjects, and with that, "protagonists in the determination of the general interest and in the evaluation of public policies"[15]. The second characteristic emphasizes the importance of an open Public Administration to study the objective conditions that each situation presents, in such a way that it knows well the social, economic, cultural and political circumstances that affect each community in particular, with the purpose of looking for strategies that moderate and balance the various interests. To this characteristic Professor Rodríguez-Arana calls " openness to reality", making it clear that the ideological perspectives that start from "ideological prejudices designed for their mechanical and unilateral projection on reality, have no meaning".

The third characteristic, called "Methodology of understanding", emphasizes the importance of dialogue as the main mechanism of consensus within democratic states where there is a plurality of interests. In this way, Rodríguez-Arana (2013, pp. 23-56) affirms that good Public Administration

14 In this sense, see the defense of a social Administrative Law by authors such as: GABARDO, 2017; BALBÍN, 2014; RODRÍGUEZ-ARANA MUÑOZ, 2015a; RODRÍGUEZ-ARANA MUÑOZ, 2015b; DELPIAZZO, 2014

15 About the evaluation of public policies: RECK; BITENCOURT, 2016, p. 131-151.

“ is made to understand, needs to affirm, explain, clarify, reason. For an elementary reason: because the owner of public administration is the people, and to him the leaders must be permanently accountable for the decisions they adopt.”

The fourth characteristic, on the promotion of participation, affirms that a good Administration needs the real presence and participation of all citizens[16], avoiding exclusions from economic, social or institutional sectors, since the main reason for being of the Public Administration is the attention of all interests with moderation and balance.

In this sense, it is necessary to change the attitude of many public servants, since the effective participation of “all” sectors requires greater mechanisms of inclusion and receptivity, that is, sufficient listening capacity and sensitivity to capture the concerns and interests present. in the various sectors and groups. Therefore, the traditional sufficiency and arrogance that initially characterized the technocracies in the States must be transformed into greater humility and respect for the difference, in order to achieve greater knowledge about the people and interests present in the communities.

The fifth characteristic analyzes the linking of ethics, making it clear that if the center of public administration is the person, good administration must work to generate an environment “ in which each citizen can exercise their freedom in solidarity. “Thus, the ethical configuration can not be understood as the articulation of a concrete and defined a priori proposal, but on the contrary the answers must be constructed in a collaborative and permanent way among all the actors, taking into account the previous characteristics of participation and knowledge of the reality, in such a way that it is possible to rectify on the fly, because the good administrator “must be clear that it is not infallible, that their opinions, their evaluations are always mediated by the information from which part, which is always limited, necessarily incomplete “ (RODRÍGUEZ-ARANA MUÑOZ, 2013, p. 23-56) .

The sixth characteristic studies innovation and the knowledge society, affirming the importance of improving the quality of people’s civic culture through training processes, using adequately the new available technologies. From this perspective, the new information and communication technologies - ICTs - help to improve relations between public administration and citizens, not only because knowledge has the

16 In this sense: CARMONA GARIAS, 2016, p. 29-60; SCHIER; MELO, 2017, p. 127-147.

capacity to improve people's lives, but also because in the Currently, the citizen has more tools to access public information. However, Rodríguez-Arana makes it clear that it is important to work in the world of education and training of public officials and citizens to obtain the best results.

Finally, the sixth characteristic speaks of the social sensitivity that derives from the principle of the centrality of the person, and that is reflected in solidarity attitudes that allow real solutions to collective questions. Therefore, public decisions must be oriented towards cooperation, coexistence, integration and the confluence of interests, which necessarily implies understanding the different interlocutors to improve the living conditions of citizens.

Taking into account the above characteristics, it is possible to verify how the right to good administration establishes the *main methodology to better know people and communities,* which evidently implies a fundamental change of perspective on Administrative Law, which was already underlined in The previous sections were characterized historically by constructing the theory of power from the top down, that is, based on relations of subordination between rulers and the governed, between those who have the power to rule and those who have the duty to obey (BOBBIO, 1989, p. 15) .

In this way, Professor Rodríguez-Arana (2013, pp. 23-56) is correct when he declares that good administration is a fundamental right that "brings with it a rethinking of administrative law". But how does the transformation towards good Public Administration happen? To answer this question, the following section will analyze the good Public Administration in Colombia, given that in the concept adopted in this study, the reforms that have taken place in the Public Administration in Colombia represent a continuous and permanent effort of several Administrations and of several periods. of government, which sought to implement a public policy coherent to the needs of society and the State in the 21st century.

6 THE GOOD PUBLIC ADMINISTRATION IN COLOMBIA

In Colombia, the Constitution does not explicitly recognize the right to good Public Administration as in the Nice Charter in Europe, but it can still be verified that the Colombian legal system has developed various institutions that seek to expand the participation of citizens in public affairs, as well as seeking to improve levels of efficiency, transparency and

accountability of state entities[17]. In this regard, Natalia Aprile (2017) states that despite the fact that the Colombian Constitution does not expressly recognize the right to good administration, "there is a concerted legal system that proclaims the empowerment of the citizen and the demand for conditions of action for the administration".

For Rivero and Arenas (2018, p. 271-272), Colombia being a Social and Democratic State of Law must transform its model of state action according to the postulates of good administration, seeking to ensure quality, the participation of citizens and the prevalence of the general interest, as part of minimum guarantees for the exercise of democratic power. On the legal framework of good administration, the aforementioned authors affirm:

> In Colombia, as in Spanish law, despite the fact that a constitutional norm that contains it was not included, if there are several binding principles aimed at making the administration good; Specifically, its existence can be derived from the reading of both the preamble and articles 1, 2, 83 and 209 (of the Constitution). Likewise, with regard to Colombian administrative law, its existence can be inferred in various laws; particularly, in the Law 489 of 1998 on the Organization of the Administrative Function (articles 3 and 4) or in the Law 1437 of 2011 that establishes the Code of Administrative Procedure and Administrative Litigation (articles 1, 3 and 103).

Here it is important to highlight that the Council of State, in the recent Judgment of October 2016 of the Judge Speaker Jaime Orlando Santofimio Gamboa, pointed out that the good administration clause is a principle and a right incorporated in the Colombian legal system:

> There is a special jurisdiction clause for the Administration that derives from the functions assigned by the constituent in the constitutional article 209, being these: i) To be at the service of the general interests, as opposed to the partisan, union or other that do not represent the common good; ii) Adhere to the principles of equality, morality, efficiency, economy, speed, impartiality and publicity; and, finally, iii) Exercise these functions through the instruments of decentralization, delegation and deconcentration of them. (...) the legal principle of Good Administration (...)

17 One of the ways to promote transparency is by guaranteeing the right of access to public information. In recent years, this right has gained an increasingly expressive protection in the countries of Latin America. On the subject in Brazil, see: MARTINS, 2014, p. 127-146; PERLINGEIRO, 2014, p. 209-227; VALIM, 2016, p. 169-181; PERLINGEIRO; DAYS; LIANI, 2016, p. 143-197. In Argentina: BUTELER, 2014, p. 61-106; BELLOCHIO, 2016, p. 39-51. In Uruguay: SCHIAVI, 2014, p. 13-45; SCHIAVI, 2015, p. 137-168.

> normative postulate that orders, to the greatest extent of the factual and legal possibilities, that the Administration guarantees the rights of those administered when they interact with it, execute In good faith and under the standard of due diligence, the functional duties that the conventional, constitutional and legal order has entrusted to it and adopt the decisions that correspond in a reasonable and balanced manner according to the values, principles and rules that emerge from the framework legal, constitutional and conventional legal.

In this order of ideas, it is possible to affirm that in Colombia there is a robust normative framework that allows the right to a good Public Administration to be demanded in all levels of government. However, it is important to analyze in detail how the constitutional and legal precepts have been interpreted so that the Public Administration is considered "good".

To begin with, it is interesting to note that document Conpes 2790 of 1995, entitled "Results-oriented Public Management"[18], determined an important conceptual framework to provide better services to citizens, improving communication and participation. This document also emphasizes the importance of using public resources efficiently and effectively. Subsequently, Conpes 3248 of 2003 determined the general guidelines, the scope and the evaluation mechanisms of the Public Administration Renewal Program (PRAP), which aims to promote the construction of a Public Administration focused on citizens, in which conception, execution and control actively participates in the community.

In development of the above strategic guidelines, the Colombian Public Administration began an important transformation process that sought to move from a legal-functional model to a management model that is concerned with results, citizen participation, quality of services and goods, responsibility, efficiency and innovation in public processes.

Thus, the Colombian State, committed to the new demands imposed by the 21st century, sought to create a new culture of quality and commitment to public service in state entities, for which it ordered the implementation of the Quality Management System, through the approval of Law 872 of 2003. When the Law was discussed in the Congress of the

18 Conpes - National Council for Economic and Social Policy is the highest national planning authority and acts as an advisory body to the Government in all aspects related to the economic and social development of the country. To achieve this, it coordinates and guides the agencies in charge of economic and social management in the Government, through the study and approval of documents on the development of general policies that are presented in session. The National Planning Department performs the functions of Executive Secretariat of the Conpes and Social Conpes, and therefore is the entity in charge of coordinating and presenting all the documents to be discussed in session.

Republic, the speaker of the Law, José Ovidio Claros Polanco, defined quality as "compliance with standards that ensure the satisfaction of the needs and expectations of the recipient or user of the service"[19], and quality management was defined as:

> (. . .) the way to constantly improve performance and performance in the functional levels of an organization, by using all human resources and available capital. For these achievements, an organizational culture is required in each of the entities of the State, likewise we must create awareness in our public officials, the feeling of transparency, responsibility and commitment for the entity where he works and the work he performs. (. . .) quality management should be understood as a controllable process and not as a random event; it must be carried out by all the members of an organization or entity and a functional work structure must be defined that involves them with the purpose of ensuring quality[20].

Taking into account the legal mandate of the Congress of the Republic, the National Government had 12 months to issue a Technical Standard for Quality Management in the State, counted from the issuance of Law 872 of 2003. For the issuance of this Standard, the National Government made public consultation in 213 state entities, who from March to July 2004 analyzed the initial proposal of the Technical Standard, in order to make comments and propose adjustments and improvements. After 11 meetings of the Technical Committee for the elaboration of the Standard, this was approved through the issuance of Decree 4110 of 2004, which officially adopts the Technical Quality Standard for the State NTCGP 1000: 2004 (VALENCIA-TELLO, 2005). In this regard, the Director of the Administrative Department of Public Administration, Dr. Fernando Grillo Rubiano (2004), stated the following:

> Quality is not the result of chance but of the will and planning of the system. Planning the system does not impose another challenge than defining the explicit policy for quality, recognizing the client

19 CONGRESS OF THE REPUBLIC (2003). *Paper for First Debate on Bill 107 of 2002 Senate, 286 of 2003 Chamber. Gazette 444 of August 28, 2003* . Available at: <http://www. secretariasenado. gov. co/index. php/gaceta-del-congreso>.

20 Ibidem.

> as the key factor that defines the quality guidelines; identify the systems of the organization to avoid duplication, manage human talent as the axis of change and generate working conditions that promote creativity and innovation.

In this sense, it can be affirmed that in Colombia the main legal framework that promotes good Public Administration according to the parameters of the 21st century are set forth in Law 872 of 2003, by means of which the Quality Management System is created for the public sector, determining the minimum requirements that public entities must meet to guarantee citizen satisfaction.

Currently, all public entities at the national level have a Quality Management System, which is regularly audited by internal teams and external control bodies, especially by the Office of the Comptroller General of the Republic. Although there are many advances made in the field of Quality Management in the Colombian State, it is evident that the organizational culture does not change with the issuance of a standard and, consequently, throughout these years several adjustments have been made to the Technical rules[21] and different Methodological Guidelines have been developed to explain more explicitly the new technical requirements that entities and public officials must fulfill in the exercise of their functions. In this way, Quality Management Systems must be constantly reviewed to ensure that the goods and services offered to citizens have previously identified standards as quality requirements, always taking care of compliance with other important requirements within the public sector, such as such as transparency, participation, accountability and efficiency in public entities.

FINAL CONSIDERATIONS

At the beginning of the article it was possible to observe that in the first years of Administrative Law, this legal branch coexisted with authoritarian practices, because of the need for order and legal security that characterized the modern State. The rationalization of power under the hierarchical and centralized model of administrative structures granted

21 Decree 4485 of 2009 updated the Technical Quality Standard -NTCGP 1000: 2009- according to public consultation made to several entities. Likewise, the new Integrated Planning and Management Model -MIPG- adopted by Decree 1499 of 2017, articulates the new Management System, which integrates the previous Quality Management and Administrative Development systems, with the Internal Control System.

unidirectional powers to public authorities, preventing the participation of citizens and the rendering of accounts about public processes.

Therefore, the right to good administration - as explained by Professor Jaime Rodríguez-Arana - represents a rethinking of Administrative Law, as the centrality of the citizen and the possibility of active participation in public processes requires the consolidation of new management models that allow greater communication with the citizens and the various interest groups.

In this sense, the effort made by the Colombian government to consolidate a new Quality Management System in the public sector, centralized in meeting the demands of citizens, represents a new management model that seeks to comply with the constitutional and legal postulates, and with it, to materialize a Public Administration more efficient, transparent and committed to the rendering of accounts on the adopted decisions. Even so, it is evident that regulatory changes require a lot of pedagogy so that they are actually incorporated by public officials and citizens on a day-to-day basis.

In this order of ideas, it is necessary to continue investigating the real effectiveness of these normative changes in the administrative structures and in the organizational culture of the entities. Likewise, greater knowledge about the methodologies used so far to better know the people and communities to whom the goods and services are directed by assessing the ability of public bodies to allow greater participation and accountability processes required public.

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CLIMATE CHANGE, RISKS AND ADAPTATION STRATEGIES IN THE BRAZILIAN CONTEXT

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ABSTRACT

Environmental quality and adaptation to climate change risks is mobilizing the attention of the academic community and policy makers around the world. The use of the territory and its environmental resources at levels capable of ensuring the regeneration and resilience of populations and ecosystems, as well as the structuring of international and national environmental governance capable of equating environmental vulnerabilities under different prisms, has become a challenge to be shared by many countries. The sharing this challenge is reflected in a number of international legal instruments such as the United Nations Framework Convention on Climate Change. The purpose of this article is to analyze how the Climate Change Conventions have been internalized in Brazil and to what extent climate change adaptation policy is translated into legislative instruments related to the prevention of climatic risks. The study, based on a qualitative document analysis, shows that Brazil has built a robust legislative framework for the management of natural resources and risk management. However, the lack of tools to evaluate its effective implementation can be a matter of concern.

Key-words: climate change, environmental governance, international conventions, public policies, Brasil