



## ADMINISTRATIVE MORALITY IN COLOMBIA: JURISPRUDENTIAL ANALYSIS

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### Abstract

*State corruption is one of the problems currently affecting public administration, a situation that justifies studying administrative morality as a principle of administrative function and as a collective right. This article addresses this issue in the context of Colombia and aims to examine the treatment and development of administrative morality by the Constitutional Court through jurisprudence. The debate revolves around the hypothesis that administrative morality implies that public servants and private individuals exercising administrative functions must strictly adhere to the mandate of the law and refrain from diverting the general interest, as citizens have the right to good public administration.*

*Methodologically, the text is grounded in the interpretive paradigm, and the study is approached through the documentary method, based on theoretical and conceptual references regarding administrative morality. The deliberation concludes that the Constitutional Court of Colombia has conducted a rigorous analysis of different constitutional scenarios, enforcing administrative morality to provide an optimal solution where the fundamental rights of the involved individuals are not compromised or violated, whether through the actions or omissions of public servants or private individuals performing administrative functions.*

**Keywords:** *administrative function, collective rights, administrative morality, public corruption, jurisprudential analysis.*

### INTRODUCTION

Public function is linked to the exercise of state power to carry out its purposes, and it encompasses the following functions: constituent, administrative, legislative, and judicial. These functions are generally carried out by public servants and, exceptionally, by private individuals, guided by the principles of legality, objectivity, and efficiency. In a strict sense, public function is associated with public employment, primarily concerning the administration of human talent in the service of the State, as stated by Younes (2016). Articles 122 to 131 of the Political Constitution of Colombia deal with the public function as a system that is part of the organization of the State.

In this regard, Article 1 of Law 909 of 2004 states that the public function comprises those who provide paid personal services, with legal and regulatory ties, in government bodies and entities. Therefore, the following types of employment are part of the public function: career positions, those appointed by free selection and dismissal, fixed-term positions, and temporary positions. In this context, the Constitutional Court of Colombia, through Sentence C-593 of 1998, stated that the



public function refers to the set of principles and rules that apply to those who have a subordinate employment relationship with different state agencies. In other words, the concept is limited to the labor management regimes that apply to individuals providing their services to the State.

Public function is the general category from which the administrative function derives. The administrative function is understood as the set of activities and tasks carried out by state entities aimed at meeting the needs of citizens in accordance with legal norms. Its implementation is conducted through the executive branch of the government, as well as autonomous bodies responsible for oversight and electoral matters. It should be noted that, on exceptional occasions, the legislative and judicial branches also exercise administrative functions.

The administrative function is characterized by being a continuous activity of the State, directed towards achieving its objectives, involving the use of state prerogatives, and must be carried out in accordance with the principles stated in Article 209 of the Political Constitution. These principles include equality, morality, efficiency, economy, swiftness, impartiality, and publicity.

Among these principles, we highlight administrative morality, which is also considered a collective right according to Article 88 of the Political Constitution. To address this administrative morality, a conceptual approach to it is presented, followed by an analysis of jurisprudence on the subject.

#### **A conceptual approach to administrative morality**

Administrative morality is a mechanism for controlling the administrative function, according to Polanía (2014). It is pertinent to highlight that the concept of morality must be situated within the framework established by the social rule of law, as violating the right to administrative morality threatens the aforementioned State. The State has the responsibility to guarantee rights while providing individuals with legal tools to enforce them, as is the case with the popular action for the materialization of collective rights. Such collective rights are the highest expression of the general interest and serve as pressure against the State's ineffectiveness in fulfilling its purposes, and they are recognized for the entire community, which is why the ownership of these rights lies in a diversity of individuals.

Administrative morality addresses legal norms and moral conduct for the benefit of the general interest and proper management of public resources. The recipients of administrative morality have an axiological and deontological obligation to behave ethically in the exercise of their functions. Therefore, morality as a principle of administrative function refers to the behavior of public servants, respecting the formalities and purposes of legal norms. Consequently, there is administrative immorality if, in addition to specific illegality, there is deceit, bad faith, abuse of power, fraud, or misuse of authority. Administrative morality includes principles of administrative law such as the general interest, the common good, transparency, and public service.

Under the principle of morality, as stated in numeral 5 of Article 3 of Law 1437 of 2011, all individuals and public servants are obligated to act with rectitude, loyalty, and honesty in administrative proceedings. Public servants include members of public corporations, employees, and workers of the State and its territorially and functionally decentralized entities, in accordance with Article 123 of the Political Constitution of Colombia. In this regard, the recipients of the principle of morality, namely, public servants and private individuals exercising administrative functions, must adhere strictly to the mandate of the law and refrain from diverting the general interest, as citizens have the right to good public administration.

In this context, the Colombian public administration has carried out several reforms aimed at increasing bureaucratic capacity, efficiency, and effectiveness, activities that have been developed over the last three decades. According to Sanabria & Rubaii (2022), these reforms have been supported by the Weberian model, new public management, and new public governance, with efforts focused on the restructuring of organizational structures and administrative procedures; strategies for efficient, flexible, and high-quality public service; and result-oriented management.

However, the Colombian public administration still exhibits a low level of bureaucratic capacity, which creates conditions for the presence of problems, such as corruption, especially manifested through state contracting, an administrative activity that should aim to satisfy the general interest and social needs in favor of fulfilling the State's objectives.

El índice de percepción de la corrupción del año 2022, elaborado por Transparencia Internacional, clasifica a 180 países, en una escala de cero (muy corruptos) a 100 (muy limpios). Dicho índice para Colombia fue de 39, muy distante de países en donde hay altos niveles de transparencia como son los casos de Dinamarca que obtuvo un puntaje de 90, y Finlandia y Nueva Zelanda, cuyos puntajes fueron de 87.

The need to combat corruption was a relevant reason for including administrative morality as a principle and as a collective right at the constitutional level. Public corruption is understood as the exploitation of public resources or the use of one's position as a public servant for personal benefit, to the detriment of the general interest. It is also defined as "the deviation from the public interest, which occurs through the abuse of one's position, with the aim of obtaining an extra-positional benefit within the public administration" (Castro, 2017, p. 9).

This concept includes subjective, adjective, and material elements. The subjective element refers to the direct impact on the formation of will and is constituted by the motivation of the individual to carry out the corrupt act in favor of personal interest. The adjective element relates to the necessary involvement of a public servant who abuses their position through illicit activities. The material element is about seeking an undue benefit. These elements can lead to crimes against public administration, such as bribery, perversion of justice, and embezzlement, respectively.

State corruption occurs due to economic, cultural, and institutional factors, generating negative externalities where the social cost outweighs the private cost. Exploitation of public resources for personal gain reduces the resources available for the provision of public goods and services, ultimately affecting a large part of society. Moreover, corruption weakens both representative and participatory democracy, disrupts free trade, promotes disjointed public policies, undermines the economy and institutions, and impacts the principles of public function. In general, public corruption leads to underdevelopment and impoverishment of society.

The protection of the right to administrative morality through the popular action is an effective mechanism to fight against corruption and promote citizen participation in public affairs. In this regard, any person has the right to demand judicial protection through this action if the recipients of this constitutional principle violate or threaten to violate administrative morality. To violate the right to administrative morality, the following elements must be present: the existence of legally protected goods affected by the conduct of those exercising administrative functions, a clear form of harm, and a necessary legal relationship in relation to the injury.

#### METHODOLOGY

The article gathers theoretical elements through which it examines the jurisprudential development of the Constitutional Court of Colombia to identify the traceability that it has given to administrative morality as a mandate. Therefore, the text is situated within the interpretative paradigm. The study is approached through the documentary method, which involves a technique of selecting and compiling information to systematically observe and reflect on a theoretical reality, using various types of documents. For this purpose, jurisprudence, legal norms, and scholarly works were consulted as fundamental inputs that support the developed theme.

In this context, while analyzing the judicial decisions issued by the highest organ of constitutional jurisdiction, where the issue of administrative morality has been addressed, it was possible to find that from 1992 the Constitutional Court issued 21 judgments on this matter. Specifically, there were 13 decisions of constitutionality, 4 of tutelage (a type of protection action), and 4 of unification (aimed at resolving discrepancies in lower court rulings).

#### Results and discussion

From the jurisprudential analysis, it was possible to identify different constitutional scenarios, following the following line of jurisprudence.

**Judgment C-046 of 1994** - Founding of the line. In this judgment, the plaintiff filed a lawsuit exercising the public action of unconstitutionality, arguing that the challenged norm should be declared unconstitutional by the Court because it allows initiating a fiscal audit of those responsible for public funds by lifting the statute of limitations.



In the sequence of events presented by the plaintiff, the scenario that would constitute an alleged violation of the superior norm against the challenged norm would be as follows: i) a new review of the national treasury accounts is conducted based on new evidence, in which; ii) fraudulent operations or irregularities related to the national treasury are detected, subsequently; iii) the statute of limitations is lifted, in order to; iv) initiate a fiscal audit. According to the above, the lifting of the statute of limitations would lead to a violation of legal certainty and due process, as there would be no fixed term for the completion of the fiscal audit. Furthermore, it is mentioned that there are events that initiate or, on the contrary, terminate the exercise of legal certainty. In this regard, the Court indicated that while it is true that the existence of a statute of limitations under the conditions of glosses on the accounts without being subject to fiscal scrutiny or observations validates the honor and good name of the official. On the other hand, if the statute of limitations is lifted after a review of the national treasury accounts, it would raise doubts about the official's actions, thus affecting their good name and credibility.

Regarding the above, two aspects are identified in the scenario formulated by the plaintiff: i) the lifting of the statute of limitations would create a situation of doubt regarding the official's actions, leading to an impact on their honor and good name. On the other hand; ii) the non-lifting of the statute of limitations would result in a circumstance of insecurity for society, as the statute of limitations would be permanent, preventing them from taking necessary measures to determine potential responsibility of the official in light of new reviews or evidence, prior to conducting the fiscal audit.

As a preliminary step before adopting a definitive decision regarding the evident confrontation between these two norms - the challenged norm and the Political Constitution - the Constitutional Court conducted a thorough study of administrative morality, directly linking it to the law that was subject to charges - Law 42 of 1993, art. 17. In this regard, the Court stated in its study that public servants exercising fiscal management functions in relation to the national treasury should uphold clean and honest behavior that is evident to society, the same standard expected from those who administer the national treasury. The principle of administrative morality is not limited to the internal realm of public servants. Furthermore, it does not create an arbitrary scenario for new investigations, as society has the right to scrutinize the national patrimony, along with the actions of officials in charge of public funds, through fiscal control bodies. These bodies have the duty and responsibility to facilitate, promote, and demand the most open examination of their conduct and operations. This can be seen materializing in the rendering of accounts, where the fulfillment of duties and responsibilities of the official can be verified.

Furthermore, if officials responsible for the national treasury completely or partially conceal actions or situations from fiscal control bodies through maneuvers and deception, it may be possible to conduct a new review to ensure the genuine compliance with the principles of fiscal management and administrative function - which includes administrative morality. The Court affirms that, in the face of possible circumstances that may arise, the statute of limitations is based on the regularity of the underlying operations in the respective account. In this regard, if new evidence were to reveal realities that were not initially perceived, the lifting of the statute of limitations would be possible to prevent tolerance towards fraudulent actions.

The Court stated that the administrative function - which includes fiscal management - is carried out under the principle of administrative morality. Accordingly, the national treasury cannot be a source of enrichment derived from dishonesty, corruption, and fraud. Theft from the national treasury violates the constitutional principle that prohibits enrichment and the establishment of rights obtained illegally from this source. Additionally, the Constitutional Court mentioned that, in the application of administrative morality, the public interest prevails. Therefore, declaring the norm unconstitutional in order to maintain the statute of limitations in any circumstance could potentially contribute to the consolidation and legitimization of misappropriations and acquisitions resulting from the theft of public funds. In conclusion, based on the aforementioned reasons, the highest court declared the constitutionality of the challenged norm, which resolves the eventual

lifting of the statute of limitations in the event of a new review of accounts based on evidence of fraudulent or irregular operations by the officials responsible for the national treasury.

**Judgment SU-881 of 2005** - Case of the Society of Dragados and Construcciones de Colombia and the Caribbean S.A. - DRAGACOL. To better understand the facts that led to the sentence under study, it is necessary to know the background that gave rise to the plaintiff's filing of the present tutela action against a judicial ruling for substantive defect, which resolved a popular action discussing matters related to administrative morality.

In this regard, on July 3, 1998, Reginaldo Bray Bohórquez - representative of DRAGACOL - requested the convening of an Arbitration Tribunal against the Ministry of Transport. The claim in said arbitration amounted to \$2,377,183,758 (two billion three hundred seventy-seven million one hundred eighty-three thousand seven hundred fifty-eight pesos), excluding additional costs such as direct damage and lost profits. After an unsuccessful attempt to hold a conciliation hearing on September 23, 1998, Mauricio Cárdenas Santamaría - the Minister of Transport at the time - and the representative of DRAGACOL made a request for an extrajudicial conciliation before the Arbitration Center of the Chamber of Commerce of Bogotá.

The conciliation hearing took place on November 6, 1998, where the following agreements were established:

- DRAGACOL would withdraw from the arbitration process it had initiated and from the executive proceedings against the Ministry of Transport before the Administrative Court of Cundinamarca.
- The Ministry of Transport committed to pay DRAGACOL the sum of \$26,000,000,000 (twenty-six billion pesos) for the following: Pending payment for work certificates of contracts 318/94, 286/96, 95 04 003/95, and their addendums, whose economic rights were assigned in favor of DRAGACOL by the Department of Valle. Pending payment for work certificates of contract 098/95. Pending payment for work certificates of contract 234/94. Pending payment for work certificates of inter-administrative contract 217/96, through which the Department of Atlántico and DRAGACOL executed contract 01 15 97 003, and whose economic rights were assigned in favor of DRAGACOL by the Department of Atlántico. Amounts corresponding to standby days. Restoring the economic balance of contracts 234/94 and 098/95.

The Ministry of Transport paid DRAGACOL \$17,600,000,000 (seventeen billion six hundred million pesos), leaving a remaining debt to DRAGACOL of \$8,400,000,000 (eight billion four hundred million pesos). As a result of this, a fiscal investigation was initiated against DRAGACOL regarding the conciliation agreement of November 6, 1998. Subsequently, the General Comptroller of the Republic and Jaime Botero Correa filed a popular action claiming that the collective rights to administrative morality and public patrimony were being violated, as the conciliation agreement implied the collection of sums that were not truly owed to DRAGACOL by the Ministry of Transport.

The claimants of the popular action sought:

- The declaration of ineffectiveness of the conciliation of November 6, 1998. This claim was based on the argument that the conciliation did not obtain the corresponding judicial approval and that it dealt with claims involved in previous judicial proceedings, which were based on a contract that had been assigned to Banco UCONAL (an entity that was not part of the conciliation hearing).
- the resituation of things to the state prior to the conclusion of the conciliation and the consequent restitution of the money by DRAGACOL.
- The declaration that the Ministry of Transport was not obligated to pay the remaining balance that was still pending.
- The recognition of incentives in favor of the popular claimant.
- The clarification that the legal effects of a popular action do not have any impact on the fiscal liability processes that may be carried out by the General Comptroller of the Republic for similar events.

In the first instance, the Administrative Court of Cundinamarca deemed the popular action inadmissible, arguing that it was not possible to affirm whether there was or was not a detriment



to public funds paid without any reason. The court also pointed out that the competent judge was the one overseeing the contract and the fiscal control entity. In the second instance, the Council of State overturned the aforementioned sentence, arguing that the popular action was appropriate even if liability proceedings were underway. Additionally, it protected the collective rights of administrative morality and public patrimony, rendering the conciliation agreement of November 6, 1998, null and void. As a consequence, the Ministry of Transport was required to refrain from making payments to DRAGACOL, and the latter was obliged to return the amount corresponding to the sum paid by the Ministry of Transport. Furthermore, Mauricio Cárdenas Santamaría was declared jointly liable for the unrecovered amount of the excessive payment.

In conclusion, based on the aforementioned precedents and considering the jurisprudence of the Council of State, it can be affirmed that the popular action was appropriate, where one of the contested rights was administrative morality, even if a parallel fiscal investigation was being conducted.

Regarding the analysis of the sentence issued by the Constitutional Court, it is necessary to point out that the former Minister of Transport, Mauricio Cárdenas Santamaría, filed a writ of tutela against the judicial decision that ruled on the popular action due to substantive defect, alleging the alleged violation of the right to due process and, consequently, to his good name. The petitioner argued that the judicial ruling incurred in substantive defect because the judge decided based on norms that were not applicable to the specific case in their retroactive effect. Additionally, the violation of due process lay in the declaration of joint liability since the Council of State did not consider the evidence from investigations conducted by the Prosecutor's Office, which showed that the actions in the conciliation hearing were not done with deceit or grave negligence. Furthermore, he asserted that the attributed liability corresponded to a subjective imputation, as it was not lawful to hold the legal representative of an entity responsible merely for being so.

In this regard, the Constitutional Court, with regard to the joint liability attributed in light of administrative morality, mentioned that it was not possible to judge them under Article 40 of Law 472 of 1998 since, being a substantive norm, it has *ex nunc* effects. Additionally, the Court stated in its judgment that the aspects concerning the declaration of violation of administrative morality and public patrimony remained standing, adhering to what was demonstrated in the process and reiterated by the Fourth Section of the Council of State. However, the Court revoked the sixth numeral of the judgment of the popular action where joint liability was declared. In conclusion, the Constitutional Court agreed with the Council of State regarding the violation of administrative morality by the former Minister of Transport, Mauricio Cárdenas Santamaría, in that his actions in the conciliation hearing held on November 6, 1998, were contrary to the administrative function, as they did not align with serving the general interests or the principles thereof, as the petitioner did not safeguard public patrimony.

**Judgment C-988 of 2006.** In this judicial ruling, the plaintiffs presented constitutional charges against Law 906 of 2004 - Criminal Procedure Code - specifically, numeral 10 of article 324, arguing that the challenged norm disregards the principle of administrative morality in the sense that it prioritizes the exceptional concept of "opportunity," allowing state officials to lightly or insignificantly harm the legal assets of public administration, undermining one of the essential values in the administration of justice. According to the plaintiffs, any impact or harm to the foundations of the State's legitimacy will always be serious and will also affect the Colombian population.

To decide whether the claimants are correct in asserting that the challenged norm violates the principle of administrative morality and consequently Articles 1 and 2 of the Constitution by establishing one of the hypotheses in which the principle of opportunity can be applied, the Court made some preliminary considerations, where the study of the principle of administrative morality established in Article 209 of the Political Constitution, its meaning according to jurisprudence, and the different instruments of protection available to the legislator were evident.

Firstly, the highest jurisdictional body reminded that the administrative organization is developed in the exercise of the administrative function enshrined in Article 209 of the Political Constitution.



Then, the Court analyzed that, to achieve the achievement of general interests, authorities are required to have an objective management through the exercise of the principles of the aforementioned constitutional article, which are inherent to public administrative actions. Furthermore, it reiterated Judgment C-561 of 1992, where it mentions that administrative morality extends to all state activities by virtue of the superior Articles 1 and 2.

In this context, the principle of administrative morality permeates all actions of public officials and individuals performing public functions. Consequently, the Constitution has also provided the population with instruments that guarantee its respect, such as: i) constitutional mandates aimed at ensuring transparent and impartial performance of public functions; ii) establishing a regime of disqualifications, incompatibilities, and prohibitions; iii) providing actions and remedies to demand the fulfillment of public functions, such as the compliance action and the popular action; iv) establishing the "repetition action" as a consequence of willful or seriously negligent conduct of one of the state agents; v) implementing fiscal, disciplinary, and internal controls.

After analyzing the charges brought by the plaintiffs, the Constitutional Court did not find evidence of a violation of the superior article 209, since the legislator did not exceed the power of configuration attributed to it in criminal matters and, therefore, did not violate the principle of morality nor consequently articles 1 and 2 of the Constitution. Additionally, the Court mentioned that the legislator is not obliged to resort necessarily to criminal action to sanction the non-compliance with the principle of administrative morality as an essential pillar of the functioning of the State. This is in accordance with the principle of necessity, which should only be applied when a serious violation of a legal interest has occurred. Moreover, the legislator has established different instruments, sufficient for the protection of this principle, which leads the Congress to dispense with criminal protection as it would exclude responsibility or punishment, taking into account the violation of the legally protected interest.

**Judgment T-391 of 2007.** Radio Cadena Nacional filed a tutela action against a judicial decision issued by the Council of State, where a popular action was decided, with the Foundation "Un sueño por Colombia" as the plaintiff, for the alleged violation of public morality, good customs, values, physical and psychological integrity of society, and collective rights such as public heritage, cultural heritage of the nation, public safety and health, and the rights of radio consumers and users in Colombia.

The popular plaintiff mentioned that the violation stems from the broadcast of the program "El Mañanero" from Monday to Friday, from 5:30 AM to 10:00 AM on the radio station "La Mega," at frequency 90.0 FM. According to the plaintiff, in this program, "youth is corrupted, being poisoned with a wide range of vulgarity and coarseness, making it a destructive channel of values and collective morality with its transmissions."

Initially, the Administrative Tribunal of Cundinamarca assumed jurisdiction, where the invoked rights of the popular plaintiff were protected, and the Ministry of Communications was ordered to initiate investigations to restrict the broadcast of the aforementioned program. Subsequently, the judgment was appealed by the promoting foundation of the popular action, by Radio Cadena Nacional, and by the Ministry of Communications. The Council of State heard the appeal and ruled to protect the collective rights to an efficient provision of the public radio broadcasting service and the rights of consumers and users of Colombian radio, consequently ordering the adjustment of the content of the aforementioned program. This decision was based on the understanding that the right to freedom of expression is not an absolute right.

For the plaintiff - Radio Cadena Nacional - the judgment issued by the Council of State constitutes an abuse of power ("vía de hecho") as it violates fundamental rights such as freedom of expression and equality, since other radio stations with similar programs have not been sanctioned. In the first instance, the Council of State in the Fourth Section denied the tutela action, stating that such action is not appropriate against judicial rulings. This ruling was appealed by the plaintiff. In the second instance, the Council of State in the Fifth Section confirmed the judgment of the first instance.



To make a substantive decision, the Corporation had to review the judgments issued in the previously mentioned background. After a thorough study, the Constitutional Court found that the Council of State, in the decision made in the judgment that resolved the popular action, had a conceptual inaccuracy regarding the concept of public morality - one of the rights invoked by the Foundation that promoted the popular action.

**Judgment C-350 of 2009.** In this judgment, the plaintiff filed a lawsuit in the exercise of the public action of unconstitutionality seeking the declaration of unconstitutionality of numeral 9 of article 35 of Law 734 of 2002 - Single Disciplinary Code. The plaintiff argued that prohibiting any public servant from engaging in acts that go against morality or good customs in the workplace violates articles 1, 4, 29, and 241 of the Constitution, as the expressions "morality" and "good customs" are very broad concepts, thus violating the principles of specificity and clarity that punitive norms should adhere to.

To examine the charge brought by the plaintiff, the Constitutional Court conducted a rigorous study of constitutional jurisprudence on the prohibition of indeterminate punitive types. In this study, the Court incorporated an analysis of the concept of morality, where it explains that morality can be protected through the popular action and constitutes one of the principles that underlie administrative function. In this regard, the decision in the judgment under study cannot be understood as a disregard for the high value of public morality in a social rule of law, as the protection of this constitutional value is defended.

The Constitutional Court concluded that indeterminate legal concepts of "morality" can be used under the current constitutional order in the legal system. However, it violates the prohibition of indeterminate disciplinary punitive types when these concepts are employed without an acceptable degree of indeterminacy, particularly when conduct is classified as offenses that are not related to professional performance, as evidenced in the case under examination. Consequently, the Constitutional Court declared the challenged norm unconstitutional.

**Judgment SU-913 of 2009.** Prior to conducting a substantive study of the present judgment, it is necessary to clarify that, during the review process by the Constitutional Court, multiple case files were consolidated due to: i) the previous declaration of an unconstitutional state of affairs; and ii) the cases being related and having a common denominator derived from a notary appointment competition. Concerning the general background of the mentioned judgment, it is specified that, by constitutional mandate, the appointment of notaries in office will be made through a competition, and the Council of the Superior Notarial Career is responsible, among other things, for establishing the competition's requirements and means of accreditation. In this regard, and based on the aforementioned attributes granted to the Corporation, it stipulated that five (5) points would be awarded for authorship of legal works, and the means of accreditation would be: i) the certificate of registration of the work issued by the National Copyright Office, or ii) certification of publication issued by the respective printing house or publishing company, along with a copy of the work.

Subsequently, a popular action was filed to discuss the violation of the right to administrative morality, arguing that the Council of the Superior Notarial Career exceeded its functions by including the second alternative mechanism - certification of publication issued by the respective printing house or publishing company along with a copy of the work - for accrediting authorship of legal works. In the first instance, the Fourth Administrative Court of Ibagué ordered, as a precautionary measure, the provisional exclusion of the evaluation and qualification of works in legal areas whose accreditation had not been done through the first mechanism stipulated by the Council of the Superior Notarial Career - with the certificate of registration of the work issued by the National Copyright Office. Later, the Council of the Superior Notarial Career appealed this decision, and it was resolved to modify the precautionary measure in a way that the appointment of individuals would be made in a provisional capacity until the Court ruled on the merits. Against this ruling, an appeal was filed, and the provisional suspension of the means of accrediting authorship of legal books through certification of publication by the respective printing house or publishing company was partially confirmed.



Before resolving the popular action in the first instance, the list of eligible candidates was issued, including those who had fulfilled the requirement through both mechanisms provided by the Council of the Superior Notarial Career. The Fourth Administrative Court of Ibagué decided to revoke the precautionary measure, stating that there was no violation of the right to administrative morality since providing an alternative means of proving authorship of legal works was not a matter to be discussed in the context of a popular action. In the second instance, the Administrative Court of Tolima found that the collective right to administrative morality was violated, considering that the Council of the Superior Notarial Career did exceed its functions by including, as an alternative proof mechanism, the authorship of a legal work in addition to registration and publication accompanied by a certification from the editor or printing house. Therefore, it ordered a new elaboration of lists of eligible candidates, recognizing the respective points for individuals who fulfilled this requirement through the first provided mechanism.

The above situation created two conflicting scenarios, as some argued that it would be fair to deduct the points given to individuals who fulfilled the requirement through the second mechanism based on the precautionary measure. On the other hand, participants who were on the list of eligible candidates and were not appointed within the following thirty (30) days demanded protection of their rights, claiming that their scores should remain intact as they constituted acquired rights.

*Study by the Constitutional Court regarding administrative morality discussed in the general background of the judicial decision.* Initially, the Court stated that the action popular is the appropriate mechanism for protecting collective rights such as administrative morality. Thus, it reiterated the jurisprudence of the Council of State on the substantial assumptions for the admissibility of this action concerning the violation of the collective right to administrative morality. The aforementioned assumptions are: the action or omission must correspond to the exercise of a public function, the action or omission must violate the principle of legality, the deviation in the performance of the function must cause harm to the general interest while benefiting the public servant or a third party; or, the deviation from the general interest must be of such magnitude as to transgress principles or values previously established as higher duties in positive law.

Subsequently, the highest court of constitutional jurisdiction developed, through the jurisprudence of the Council of State, the concept of the right to administrative morality. Then, it was pointed out that there was a possible overstepping of functions by the Council Superior of the Notarial Career, in the sense that, in the exercise of the regulatory power of the National Government, it issued a decree explicitly stating that the publication of works in the field of law would be accredited with the registration certificate from the National Directorate of Copyrights. In this regard, there is indeed an overstepping of functions by the Council Superior of the Notarial Career by assuming regulatory competencies not assigned by constitutional or legal mandate. Additionally, through a judicial ruling, the Constitutional Court pointed out that it is indeed a situation created by the arbitrary actions of the Council Superior of the Notarial Career, which generated contest scenarios under the guise of illegal rules that gave unfair disadvantages, leading to conditions of inequality for the contestants.

Additionally, the Constitutional Court evaluated the actions carried out by the popular judge and how he incurred in a substantive defect in that he did not conduct a judgment aimed at demonstrating the violation of collective rights to administrative morality, but rather limited himself to carrying out a legality judgment typical of a process invoking control mechanisms. Thus, the Court indicated that administrative morality is linked to the exercise of administrative activity through the authorities instituted for this purpose, either through government officials or private individuals performing administrative functions. On the other hand, the Court stated that the rules established for the calls for competition are the laws of the contest and are unmodifiable, except those that are contrary to the Constitution, the law, or violate fundamental rights. Based on the above, according to the Constitutional Court, in addition to being obliged to conduct a legality



study, it was also necessary to review whether this norm resulted in a benefit to third parties, capable of undermining administrative morality through the abuse of power. Finally, the Constitutional Court invalidated the first and second-instance judicial decisions that resolved the popular action, and instead, indicated the application of the rules of the merit-based competition.

**Judgment T-066 of 2010.** In this judgment, a tutela ruling issued by the Superior Tribunal of Judicial District of Santiago de Cali was reviewed, where the petitioner argued that the respondent entity - "Grupo Interno de Trabajo de Gestión Pasivo Social de Puertos de Colombia" - violated his fundamental constitutional rights to due administrative process, defense, and a life with dignity. The alleged violation of the petitioner's rights arose from the unilateral suspension of his lifelong pension. The petitioner stated that the administrative action was carried out silently, privately, without giving him the opportunity to express his opinion and present evidence to demonstrate his rights. Additionally, he mentioned that he is a subject of special constitutional protection at the age of 83, and the failure to temporarily protect his rights could potentially lead to an irreparable harm scenario.

The respondent submitted a report stating the provisional suspension of the petitioner, as it was established that he was receiving two pensions at the expense of public funds, which would be contrary to Article 128 of the Constitution. To make a substantive decision, the Constitutional Court studied the scope of Article 128 of the Constitution, where it concluded that the constitutional protected legal interest by the aforementioned article, which it develops, is administrative morality considered in the context of public function, and therefore, the periodic allocation received should be understood with respect to those who hold public office.

Based on the above, the Constitutional Court cannot overlook the fact that the petitioner holds a pension right that cannot be affected by the unilateral decision of the entity responsible for its payment, under the pretext of safeguarding public funds. Such action would imply a violation of the fundamental rights to defense and due process, which have a constitutional character and must prevail both in judicial and administrative proceedings. Consequently, the Constitutional Court granted protection to the rights invoked by the petitioner.

**Judgment C-252 of 2010,** the Full Chamber of the Constitutional Court, exercising concentrated and abstract-automatic constitutional control, examined the constitutionality or unconstitutionality of Decree 4975 of 2009. Before ruling on the constitutionality or unconstitutionality of the entire Legislative Decree, among other things, the importance of having a social protection system that guarantees the effective enjoyment of the right to health within a sustainable financial framework was considered. Concurrently, the Court analyzed its constitutional mandate to ensure the effective enjoyment of the right to health and the existence of recurring structural problems in the healthcare system identified by constitutional jurisprudence.

Therefore, the Court cited jurisprudence from the Council of State regarding measures taken to standardize reimbursements and address claim delays, where the Council of State had previously protected collective rights to administrative morality. Based on these and other considerations made by the Court, the Legislative Decree in question was declared unconstitutional.

**Judgment T-230 of 2011.** In this tutela judgment, the Constitutional Court reviewed the ruling issued by the Council of State, where a popular action filed by citizens Alberto Bravo Cortes and another against the Ministry of Transport and the Capital District of Bogotá was decided. In the first instance, the collective rights of public heritage and administrative morality were protected, as the Capital District of Bogotá refused to transfer the total 10% stipulated in Article 10 of Law 769 of 2002 to the Colombian Federation of Municipalities.

The appellate court confirmed the ruling of the first instance. Subsequently, the Ministry of Transport appealed the ruling, arguing that there was an indirect selection of the constitutional action, as well as lack of reasoning in the judgment and lack of legitimacy in the passive cause. Later, the Ministry of Transport filed the tutela action under review, arguing substantive defect, violation of due process, manifest procedural defect, and disregard for precedent jurisprudence.

In the first instance, the Council of State - First Section - denied the protection based on the argument that the tutela action is not applicable against judicial rulings. After the appeal by the



legal representative of the Ministry of Transport, the Second Section of the Council of State confirmed the contested tutelage ruling. On this occasion, the Court examined the proceedings prior to the judgment review, where it noted the dissenting opinion of Magistrate Luis Manuel Lasso Lozano from the Administrative Tribunal of Cundinamarca. In his opinion, he mentioned that regarding administrative morality, a violation of this collective right implies a violation of legality (objective aspect) and also requires demonstrating that the official who violated such right did so to achieve personal gain, either for themselves or for a third party (subjective element).

Furthermore, when analyzing the existence of a "vía de hecho" (manifest violation of the law) due to the disregard of precedent jurisprudence regarding the violation of the collective right to administrative morality, the Constitutional Court mentioned that, in matters of the admissibility of the popular action to safeguard administrative morality, constitutional jurisprudence has adopted the approach developed by the Council of State in this regard.

**Judgment C-414 of 2012.** In this ruling, the plaintiff challenged Article 224 of Law 223 of 1995, arguing that it violates freedom of association and territorial autonomy, the principle of legality, and the mandate imposed on public authorities to act in accordance with administrative morality and the public interest. Additionally, the plaintiff claimed that the law violates constitutional conditions for assigning public functions to private entities by creating a special account fund within the budget of the National Conference of Governors, where the proceeds from taxes on foreign products will be deposited. The law also establishes the administration, allocation of financial returns, and the adoption of mechanisms for resolving disputes that arise from the distribution of the funds of the Special Account, to be determined by the Assembly of Governors and the Mayor of the Capital District through an agreement by an absolute majority.

Regarding the second charge presented by the plaintiff, concerning the violation of the principle of legality, the Court mentioned that there is no violation of the aforementioned principle. According to administrative morality, the application of such norms ensures compliance with the obligation to adjust the behavior of private individuals performing public functions and associations of public entities subject to private law, adhering to administrative morality. This includes the mandate of strict adherence to the law and the prohibition of deviating from the general interest. The Court concluded that the exercise of assigned public functions is clearly subject to a comprehensive catalog of rules and principles that limit and guide them. Consequently, the Court declared the constitutionality of the challenged norm.

**Judgment C-643 of 2012.** In this judicial ruling, the plaintiff raised charges against Article 3 of Law 1416 of 2010, arguing a possible violation of the principle of equality, morality, and efficiency, and a potential disregard of the autonomy of territorial entities. This is because the Law authorizes territorial entities to assume directly and from their budget the payment of reconciliations, convictions, indemnifications, and any other form of conflict resolution carried out by the comptroller's offices, without affecting the spending limit of the functioning of the respective territorial comptroller's office. When analyzing the charges presented by the plaintiff, the Constitutional Court found it necessary to study administrative morality, as the plaintiff claimed that the challenged norm violated this principle and collective right.

In light of the above, the Constitutional Court cited the book "Tratado de Derecho Administrativo" by Jaime Orlando Santofimio (1998), where it is stated that the administrative morality referred to by the constituent is the adequate behavior of public servants regarding the formalities and purposes derived from the principle of respecting the block of legality.

Based on the above, the Court found that the challenged norm disregards the principles of the exercise of public function, as it drastically undermines both administrative morality and efficiency. This is because the expenses generated in the actions of these control bodies would not be paid but would impact the budget of territorial entities, putting at risk sectorial development plans and the fulfillment of functions entrusted to these influential entities. Consequently, the availability of resources of the municipality is given priority, favoring their use in matters agreed upon in the territorial entity's budget. Ultimately, based on the aforementioned reasons, the Court declared the challenged norm to be unconstitutional.



**Judgment C-1056 of 2012**, the constitutionality of Article 1 of Legislative Act 01 of 2011 was challenged. This article establishes that congress members shall not lose their investiture concerning the conflict of interest regime regarding disqualifications and incompatibilities when they participate in the debate and voting of legislative acts. The plaintiffs argued, particularly with regards to administrative morality, that the conflict of interest regime for congress members is an integral part of the constitutional framework, and it is necessary to limit the exercise of their functions. They emphasized the importance of creating a strict conflict of interest regime and imposing severe sanctions for those who violate these rules. This is essential to guarantee the supremacy of the general interest and the primacy of the public interest over private interests.

In light of the above, the plaintiffs argued that the legislative act would leave congress members free to act based on their personal convictions, thereby jeopardizing democratic values, including the primacy of the common good and the general interest. Furthermore, they claimed that the constitutional reform they challenged weakens and relativizes the institution. Regarding the examination carried out by the Court concerning administrative morality, the Constitutional Court stated that the institution of conflict of interest seeks to preserve, among others, morality as a fundamental principle of public actions, preventing personal motives of congress members from undermining this principle, which would result in the delegitimization of their mandate, to the detriment of the democratic principle.

Based on the above, before conducting a constitutional replacement test, the Constitutional Court recounted that there was indeed an affectation of essential aspects of the 1991 Constitution, such as the democratic principle, the primacy of the general interest, the separation of powers, the duty of congress members to act at all times in consultation with justice and the common good in the development of the principle of morality, the possibility for voters to control the actions of those elected by them, and the specific configuration that the constituent assembly assigned to the different mechanisms of constitutional reform, which determines the level of inherent rigidity in a specific higher text. In light of the aforementioned considerations, the Constitutional Court declared Legislative Act 01 of 2011 unconstitutional.

**Judgment C-826 of 2013**, a constitutional challenge was presented against the entire Law 872 of 2003, arguing that it violated articles 209, 267, 268, 269, and 272 of the Constitution. The main argument was that the Quality Management System in the Executive Branch clashed with the functions attributed to the Comptroller General of the Republic, as the purposes assigned to the Quality Management System were the same as those mandated by the Constitution to the Comptroller. Additionally, it was argued that it seemed illogical for the same company to hire the entity that would oversee it.

In order to make a decision on the merits of the case, the Constitutional Court studied the constitutional principles that guide public administration and management, such as equality, morality, efficiency, economy, promptness, impartiality, and publicity. The Court also mentioned that the principle of administrative morality seeks to ensure the transparent and impartial fulfillment of public functions, as well as establishing actions and resources to demand compliance with public functions in accordance with the Constitution. It stated that such principles are susceptible to protection through the actions of "repetición" (repetition) and "acción popular" (popular action).

Based on the above, and concerning administrative morality, the Constitutional Court decided to declare the constitutionality of articles 1 and 2 of the challenged law. The implementation of the Quality Management System in national entities aims to create a culture of quality to satisfy users, which promotes the goals of the social, constitutional, and democratic State, as well as the effective enjoyment of citizens' rights through quality management tools created and designed by the legislator and the constituent assembly. Furthermore, the Quality Management System is established within constitutional and legal mandates.

**Judgment C-288 of 2014**, the Constitutional Court examined the alleged partial unconstitutionality of Article 21 of Law 909 of 2004, where the petitioner claimed that it violates Articles 6, 13, 29, 53, 125, and 130 of the Constitution. The petitioner argued that the evaluation of the capacities



and competencies of candidates for certain positions, as specified in the aforementioned law, based on the existing lists of eligibles for permanent positions, without causing the removal of such lists, is unconstitutional.

In reaching a decision on the matter, the Constitutional Court conducted a study, among other things, of the principles of public function applicable to the mechanisms of entry into the public administration. Focusing on the principle of administrative morality, the Court mentioned that it implies ensuring transparency and publicity in decision-making affecting individual rights and interests. Thus, administrative morality should preside over all administrative activity, and any action undertaken in good faith embodies the principle of administrative morality. The Court also reiterated the points made in Sentence C-046 of 1996, which define manifestations of the principle of morality, including transparent and impartial performance of public functions, the regime of disqualifications, incompatibilities, and prohibitions, and the establishment of actions to protect administrative morality, such as the action of repetition or the action popular.

Finally, concerning administrative morality, the Constitutional Court declared the conditional constitutionality of numeral 3, Article 21 of Law 909 of 2004. The challenged provision should ensure compliance with the principles of public function, which includes administrative morality.

**Judgment T-307 of 2016**, the Constitutional Court, in the exercise of diffuse and concrete constitutional control, reviewed the present judicial decision where the petitioner claimed that his fundamental rights to personal development, equality, work, minimum subsistence, a dignified life, and the principle of good faith were violated due to the actions taken by the Administrative Chamber of the Supreme Judicial Council. The petitioner was denied the honorary judgeship based on his alleged incompatibility to hold unpaid positions, as he was simultaneously working with the Department of Education in the municipality of Bello, Antioquia.

To reach a decision on the merits, the Constitutional Court examined the scope of the incompatibility provided for in Article 128 of the Constitution. Regarding administrative morality, the Court stated that its purpose is to prevent the concurrence of two or more public positions, which could result in receiving more than one salary from the State. This limitation aims to preserve public resources by preventing public servants from influencing their ability to receive multiple payments from the State. In this context, it became evident that the petitioner was indeed in a state of incompatibility because, although he received remuneration for his role as a teacher under the Department of Education in Bello, holding an honorary judgeship would not create any incompatibility, and thus, denying him the recognition of his legal practice lacked constitutional validity.

Despite finding that the administrative morality claimed by the Administrative Chamber of the Supreme Judicial Council was not violated, the Constitutional Court identified various reasons that prevented it from granting protection to the allegedly violated fundamental rights. Based on these reasons, the Constitutional Court confirmed the judgments of the first and second instances that denied protection of the petitioner's invoked fundamental rights.

**Judgment SU-585 of 2017**, the Constitutional Court analyzed facts related to a tutela action against judicial decisions that resolved an action popular. The petitioner filed an action against the National Electoral Council and the National Directorate of the Colombian Liberal Party to protect the collective right and interest of administrative morality, particularly the political parties and movements allegedly violated by the resolution that promulgated a new statute without having the competence to undertake such action.

In the first and second instances, the Administrative Court of Cundinamarca and the Council of State respectively reviewed the case. The Administrative Court of Cundinamarca denied the petitioner's claims for failing to demonstrate the existence of a violation or threat to the collective right invoked. However, the Council of State reversed the decision of the lower court, concluding that the rights invoked by the petitioner had been infringed. Nevertheless, the formerly accused parties, now the petitioners of the tutela, argued that the decision violated fundamental rights to due process, equality before the law in connection with the guarantee of participation in the formation, exercise, and control of political power. In the first instance, the Administrative Court



declared the tutela action inadmissible for lack of standing by the defendants. In the second instance, the Council of State reversed the decision of the lower court and declared the lack of standing by the petitioner, as there was no evidence of a violation of their fundamental rights.

In the review process, the Constitutional Court, concerning administrative morality, mentioned that it is a principle established by the 1991 Political Constitution. It is an open-textured principle inspired by the prevalence of the general interest, aiming for clean, honest, and upright administrative actions. Administrative morality, as a collective right and interest, grants legitimacy to anyone to demand judicial oversight of the proper exercise of administrative functions.

However, the Constitutional Court mentioned that this principle is only applicable to public entities in the exercise of administrative functions and to private individuals performing public functions. In this particular case, administrative morality does not apply because the alleged violation of rights occurred in the exercise of private actions. Granting the petitioner's rights would result in a violation of the principles of separation between the public and the private. In conclusion, the Constitutional Court protected the petitioner's fundamental rights. However, it confirmed the first-instance sentence that resolved the action popular, stating that there was no violation of administrative morality, and thus, denied the petitioner's claims.

**Judgment SU-649 of 2017**, the Plenary Chamber of the Constitutional Court reviewed the proceedings that preceded the present judicial decision. In this case, the petitioner alleged a violation of the fundamental right to due process within an action popular in which the protection of collective rights to administrative morality and public heritage was requested due to the delivery of historical and archaeological assets that constitute the Quimbaya Cultural Heritage.

In the first instance of the action popular, the Twenty-Third Administrative Court of Bogotá upheld the collective rights to public morality and defense of public heritage. Subsequently, the Ministry of Foreign Affairs, the Ministry of Culture, and the Administrative Department of the Presidency of the Republic appealed the decision of the lower court. In the second instance, the Administrative Court of Cundinamarca revoked the ruling and denied the petitioner's claims, as the violation of the invoked rights had not been proven, and also declared the inadmissibility of the action. Later, the petitioner filed a tutela action against the judicial decisions of the lower court and the higher court of the action popular, alleging a violation of the fundamental right to due process. In the first instance of the tutela action, it was declared inadmissible by the Administrative Court of Cundinamarca. In response, the petitioner argued that the aforementioned Court had incurred in violations of procedural rights, factual rights, substantive rights, decision without motivation, and disregard for precedents.

Regarding the considerations made by the Constitutional Court on the constitutional framework that regulated the delivery of fiscal assets to another State by the President of the Republic in 1893, concerning administrative morality, it can be observed that this principle has a dual character: on one hand, it is a principle of administrative function, and on the other hand, a collective right. The Court reaffirmed what was mentioned in Sentence C-046 of 1994. Additionally, the grounds for the admissibility of the action popular when the protection of the collective right to administrative morality is invoked were confirmed according to the Council of State.

Based on the above, and other arguments presented in the judicial decision, the petitioner's fundamental rights were protected. Moreover, the collective rights to public morality and defense of public heritage were upheld, ordering the Ministry of Foreign Affairs and the Ministry of Culture to carry out diplomatic efforts to repair and recover the Quimbaya Cultural Heritage.

**Judgment C-017 of 2018**, the Plenary Chamber of the Constitutional Court exercised automatic, concentrated, and abstract constitutional control over Decree-Law 588 of 2017, which organized the Commission for Truth, Coexistence, and Non-Repetition. In order to determine the potential constitutionality of the norm, the Constitutional Court examined the scope and relevant provisions of autonomous and independent bodies within the State structure, understanding that the Commission for Truth, Coexistence, and Non-Repetition, under the framework of Constitutional Amendment 01 of 2017, is an autonomous entity at the national level, with legal personality, administrative, budgetary, and technical autonomy, and subject to its own legal regime.



Regarding administrative morality, the Court analyzed the fact that autonomous and independent bodies are part of a unitary state structure and exercise public functions, subject to constitutional principles such as administrative morality. According to the Constitutional Court, administrative morality entails a range of behaviors in accordance with the integrity and honesty that society demands and expects from those who manage community resources. It also clarified that administrative morality does not refer to an individual's inner conscience but rather to their relationship with the legal order, based on which society expects actions arising from rectitude and probity.

**Judgment C-101 of 2018**, the constitutionality of Article 38, numeral 4°, and paragraph 1° of Law 734 of 2002 - the Unique Disciplinary Code - and Article 60 of Law 610 of 2000, which establishes the procedure for fiscal liability processes under the jurisdiction of the comptrollerships, was reviewed.

The first challenged norm establishes that any person who has been declared financially responsible will be ineligible to hold public office and contract with the State for a period of five (5) years following the execution of the corresponding ruling. This disqualification will cease when the competent entity declares that payment has been received, or when the responsible party is excluded from the list of financially responsible individuals. On the other hand, the other challenged norm stipulates that legal representatives, as well as nominators and other competent officials, must abstain from appointing, swearing in, or entering into any type of contract with individuals listed in the bulletin of financially responsible parties, under penalty of misconduct.

According to the plaintiff, the challenged norms violate Articles 1, 2, 40, 93, 94, 179, 197, and 293 of the Political Constitution, as well as Articles 23, 29, and 30 of the American Convention on Human Rights. In order to render a decision on the merits, the Constitutional Court conducted an analysis of the General Comptroller of the Republic and fiscal control, as its constitutional establishment aims to preserve public funds. In this examination, the Court also addressed administrative morality, mentioning its relation to the use of public resources and reaffirming the principles outlined in Sentence C-046 of 1994. Additionally, the Court studied the purpose of the ineligibility, which is to guarantee the protection of public assets. In this instance, the Constitutional Court declared the constitutionality of the challenged norms based on the analyzed arguments throughout the ruling.

**In Judgment C-093 of 2020**, the plaintiff filed a partial unconstitutionality lawsuit against the second paragraph of Article 183 of Law 1801 of 2016 —National Code of Police and Coexistence—. This provision establishes that one of the consequences of not paying fines is the disqualification from being appointed or promoted to a public office. The constitutional principles that the plaintiff alleges are violated by the aforementioned norm are: i) the principle of merit, and ii) the right to apply for public positions.

Before declaring the constitutionality or unconstitutionality of the challenged norm, the Constitutional Court conducted a constitutional review of Article 183, paragraph 1, numeral 2 of Law 1801 of 2016. In this review, the Court mentioned that administrative morality is linked to the exercise of administrative activity, which involves complying with the Constitution and laws, as well as observing the functions assigned by law or regulation. Additionally, the Court reiterated Judgment SU-585 of 2017, emphasizing the importance of acting with integrity, honesty, and probity, not based on the subjectivity or moral conscience of the person exercising administrative functions, but rather guided by objective criteria such as defending public assets, the general interest, and the legal order.

In this context, any citizen aspiring to hold public office must respect constitutional and legal mandates. Consequently, they should not give reason for the imposition of fines and sanctions, which would also prevent them from facing the scenario of having fines imposed by the relevant authorities. Now, in the event of receiving a fine or sanction for any reason, which in the presented scenario would not lead to disqualification from holding a position, it is the individual's responsibility to pay it, ensuring that anyone aspiring to enter or advance in a position fulfills their legal and constitutional duties. Moreover, their behavior should reflect respect for values



considered valuable by the Constitution, such as relationships of coexistence between citizens and between citizens and public authorities.

Based on the above, it is possible to infer that achieving the mentioned objectives can only be accomplished if there are mechanisms and norms that require citizens to comply with them. In conducting the proportionality test, it can be observed that:

- The measure is suitable because it pursues constitutionally valid purposes, such as a) compelling the offender to pay the fine by restricting access to state benefits, and b) protecting administrative morality.
- The measure is necessary because the chosen measure by the legislator is the least restrictive among other principles, considering its invalidity if there exists another measure with a lower impact and similar suitability. This is because in this scenario, the complete disqualification of the person aspiring to public office could have been imposed. Therefore, the measure falls in an intermediate scenario where it does not prevent the individual from participating in meritocratic processes nor disregards the duty to protect the validity and effectiveness of constitutional principles.
- The measure is proportionate in the strict sense because if the protection of the person aspiring to public office is chosen, allowing them to hold the position, it would not safeguard constitutional mandates aimed at the general interest, such as coexistence, defense of public order, fundamental rights, and the ends of the State. Additionally, during the selection process, the individual can catch up with the administration in the context of fines imposed for violating coexistence and policing relations.

Based on the above, the Constitutional Court decided to declare the constitutionality of the challenged norm.

**Judgment C-172 of 2021.** In this judgment, the plaintiffs sued articles 11.1, 11.2., 12.1, 22 transitory paragraph, 27 transitory paragraph, 28, 29, 30, 44, 46 subsection 2, 49, 53 subsection 1, 54 subsection 1, 62 subsection 2, 62. 4, 83 transitory paragraph, 97, 123, 144 and 149 of Decree Law 71 of 2020, which establishes and regulates the specific career system for public employees of the Special Administrative Unit, National Tax and Customs Directorate, and issues regulations related to the administration and management of human talent. The scenario in which the alleged violation of the constitutional mandates takes place is in the practice of the polygraphic test that involves an interrogation that is carried out on the contestant.

In the study conducted by the Constitutional Court, it was exposed that the administrative career system contributes to making the State effective, efficient, and carries out its duties in accordance with principles of morality, impartiality, and transparency. Regarding administrative morality, there is a direct link with these public merit competitions as it guarantees the essential purposes of the State, and also ensures that those aspiring to public positions are objectively evaluated to ensure that those holding such positions are individuals who are genuinely best qualified for the job, without engaging in any discriminatory practices that may affect the fulfillment of the State's mandates as established in the constitutional norms. Finally, the constitutionality of the provision related to administrative morality was declared in the understanding that the test requires prior consent from the candidate to safeguard respect and effectiveness of constitutional principles.

### CONCLUSIONS

From public function derives administrative function, as a permanent activity of the State aimed at achieving its purposes and exercised in accordance with the principles stated in Article 209 of the Political Constitution, among which administrative morality is included, which is also a collective right. For its effective protection, citizens can make use of the mechanisms established for this purpose, including administrative contentious proceedings and popular, group, and tutela actions. The need to combat corruption was a relevant reason for including administrative morality as a principle and as a collective right at the constitutional level. However, state corruption, mainly developed through public contracting, remains one of the most significant problems in public administration, making it inefficient and ineffective.



From the jurisprudential analysis, it is possible to affirm that the Constitutional Court of Colombia has conducted a rigorous examination of different constitutional scenarios, imparting administrative morality in them in order to provide an optimal solution where fundamental rights of the individuals involved are not compromised or violated, whether by action or omission of public officials or individuals performing administrative functions. In this sense, in 1994, the Constitutional Court provided the legal community with an initial concept of administrative morality, and since then, it has been noted that this is not a principle confined to the internal sphere –personal beliefs– of public officials; on the contrary, these behaviors must be manifested and reflected in their actions.

In addition to the concept provided in the landmark ruling, the Constitutional Court has further expanded the notion of administrative morality by explaining its components. On one hand, it implies a violation of legality –an objective aspect– and, furthermore, the demonstration that the official who breached such right did so with the intention of achieving personal gain, either for themselves or for a third party –a subjective element–.

It is evident how the Constitutional Court has progressed in understanding the underlying motives, and therefore, its mission is to optimize conflicting rights. This can be observed in 2009, when current and dominant criteria were established, based on which the final decision-making body of constitutional jurisdiction has subsequently made decisions. These criteria encompass the substantial assumptions that would confirm a potential violation of administrative morality for the admissibility of a popular action as a mechanism for protecting collective rights, namely: i) the action or omission must correspond to the exercise of a public function; ii) the action or omission must harm the principle of legality; iii) the deviation in the fulfillment of the function must result in a detriment to the general interest, benefiting the public servant or a third party; or iv) the deviation from the general interest must be of such magnitude that it transgresses principles or values previously established as superior duties in positive law.

Additionally, the Court has made a clear differentiation between administrative morality as a principle and as a collective right. It has explained that it is of an open texture, inspired by the prevalence of the general interest, as well as the legitimacy of every person to demand judicial oversight, respectively. Finally, at present, the final decision-making body of constitutional jurisdiction resolves disputes whose object of litigation lies in administrative morality, applying the concepts, aspects, and criteria mentioned above.

## REFERENCES

- [1] *Asamblea Nacional Constituyente. Political Constitution of Colombia. Constitutional Gazette 116. July 20, 1991.*
- [2] *Castro, C. Public and Private Corruption: Causes, Effects, and Mechanisms to Combat It. Bogotá: Universidad del Rosario, 2017.*
- [3] *Congress of Colombia. Law 909. "On the regulation of public employment, administrative career, public management, and other provisions." September 23, 2004.*
- [4] *Congress of Colombia. Law 1437. "Code of Administrative Procedure and Contentious Administrative Law." January 8, 2011.*
- [5] *Constitutional Court of Colombia. Judgment C-046. February 10, 1994.*
- [6] *Constitutional Court of Colombia. Judgment C-593. October 21, 1998.*
- [7] *Constitutional Court of Colombia. Judgment SU-881. August 25, 2005.*
- [8] *Constitutional Court of Colombia. Judgment C-988. November 29, 2006.*
- [9] *Constitutional Court of Colombia. Judgment T-391. May 22, 2007.*
- [10] *Constitutional Court of Colombia. Judgment C-350. May 20, 2009.*
- [11] *Constitutional Court of Colombia. Judgment SU-913. December 11, 2009.*
- [12] *Constitutional Court of Colombia. Judgment T-066. February 4, 2010.*
- [13] *Constitutional Court of Colombia. Judgment C-252. April 16, 2010.*
- [14] *Constitutional Court of Colombia. Judgment T-230. March 31, 2011.*
- [15] *Constitutional Court of Colombia. Judgment C-414. June 6, 2012.*
- [16] *Constitutional Court of Colombia. Judgment C-643. August 23, 2012.*
- [17] *Constitutional Court of Colombia. Judgment C-1056. December 6, 2012.*



- [18] Constitutional Court of Colombia. Judgment C-826. November 13, 2013.
- [19] Constitutional Court of Colombia. Judgment C-288. May 20, 2014.
- [20] Constitutional Court of Colombia. Judgment T-307. June 16, 2016.
- [21] Constitutional Court of Colombia. Judgment SU-585. September 21, 2017.
- [22] Constitutional Court of Colombia. Judgment SU-649. October 19, 2017.
- [23] Constitutional Court of Colombia. Judgment C-017. March 21, 2018.
- [24] Constitutional Court of Colombia. Judgment C-101. October 24, 2018.
- [25] Constitutional Court of Colombia. Judgment C-093. March 3, 2020.
- [26] Constitutional Court of Colombia. Judgment C-172. June 3, 2021.
- [27] Polanía, N. *Administrative Morality: From Formulation to Effectiveness*. Bogotá: Universidad Externado de Colombia, 2014.
- [28] Sanabria, P & Rubaii, N. *Analysis of Public Policies in Colombia*. Bogotá: Universidad de los Andes, 2022.
- [29] Transparency International. *Corruption Perceptions Index 2022*. Retrieved from: <https://www.transparency.org/en/cpi/2022>
- [30] Younes, D. *Course of Administrative Law*. Bogotá: Editorial Temis, 2016.