

PRINCIPLE OF SOLIDARITY OF TAXPAYERS IN COMPLIANCE WITH THE SOLEMN REQUIREMENTS OF THE MINIMUM PENSION GUARANTEE IN COLOMBIA

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Abstract - This article is intended to determine compliance with the principle of solidarity in the accreditation of the legal requirements to obtain the minimum pension guarantee in Colombia; The topic was addressed through a rigorous analysis of the theories and legal foundations of the topic of concern, as well as from the methodological approach directed from the interpretative paradigmatic view, the qualitative approach and the use of the methods of legal hermeneutics. yielding a thorough study of the requirements to obtain the minimum pension guarantee, where it was determined that the constitutional principle of solidarity is reflected in respect for compliance with these, granting within a maximum period of four months for the payment of the first pension allowance that guarantees a minimum subsistence wage and a development of life in dignified and fair conditions for workers who, during their working life, earned a current legal monthly minimum wage.

Keywords: Principle, solidarity, requirements, pension, guarantee;

INTRODUCTION

The objective of this research is to analyze the solemn requirements that are necessary for the guarantee of a minimum pension and that contribute to the materialization of the principle of solidarity, to achieve this, we had into account the background regarding this matter which allowed us to have a look at how this topic has been developed in Colombia, and this background is supported by the contributions of Cañón (2017) with his scientific article called Solidarity As The Foundation Of The Social Rule Of Law, social security and social protection in Colombia; Salazar (2016) who makes an in-depth study of the figure of minimum pension guarantee in what corresponds to its content, origin and formal requirements to obtain it.

This analysis will be achieved by developing four key objectives such as: indicating the solemn requirements that are required to obtain the minimum pension in Colombia, also studying the constitutional principle of solidarity as a benefit and support to obtain the minimum pension in Colombia, carrying out a compared study between Chile and Colombia regarding the applicability of the principle of solidarity in the minimum pension system and finally, establishing whether the solemn requirements required to obtain a minimum pension in Colombia are an impediment for the worker to benefit from the principle of solidarity; in order to give a clear and precise conception about the effectiveness of the solidarity that in this case is at the head of the state, and if it goes hand in hand with the requirements that the law subsequently demands from us in its article 65 of law 100 of 1993 to obtain such guarantee.

It should be stated that the insurance benefit models are a response to the trends of the economic systems, which allows the governments that regulate the minimum pension to be supported by the periodic contribution elements accompanied by the solidary distributions of the taxpayers to the system promoted by the ability to pay, in States such as Colombia and Chile, some similarity can be seen since both are systemically raised by the social market economy where the public treasury, taxpayers and employers support the solidarity processes of attention to social contingency, old age, poverty and precariousness based on a minimum pension guarantee.

The research will be oriented towards aspects that will be addressed from the research paradigm with a qualitative approach. Depending on the level it will reach, it was classified as descriptive, in parallel, according to the sources that originate the information or the information collected it was classified as documentary. According to the design, the research is hermeneutic bibliographic. The study focused on the following research problem :



How do the solemn requirements which are necessary to guarantee a minimum pension contribute to the materialization of the principle of solidarity ?

To answer the previous question, it was necessary to design and execute the following objectives :

- Indicate the solemn requirements that are required to obtain the minimum pension in Colombia.
- Study the constitutional principle of solidarity as a benefit and support to obtain the minimum pension in Colombia.
- Carry out a comparative study between Chile and Colombia regarding the applicability of the principle of solidarity in the minimum pension system.
- Establish whether the solemn requirements which are necessary to obtain a minimum pension in Colombia are an impediment for the worker to benefit from the principle of solidarity.

1. METHODOLOGY

In general terms, the research was guided by the methodological procedures of social science, especially law, that is, the use of tools, concepts and sources related to the problem of the principle of solidarity and the guarantee of a minimum pension; the above, in order to obtain clear and objective results through interdisciplinarity and holistic knowledge.

This article is supported under the use of the interpretive paradigm and for this purpose the arguments supported by Pérez, (1994) are paraphrased here, he states :

The theory constitutes a reflection in and from practice, shaping the reality of observable and external facts, therefore meanings and interpretations are developed by the subject himself, through interaction with others within the globality of a given context. Emphasis is placed on understanding the processes from one's own beliefs, values and reflections

The methodological framework used in this project is oriented from the parameters of the qualitative approach (subjective and interpretive universe), within which, the type of descriptive research and the methods of general and legal hermeneutics will be worked.

Through General Hermeneutics, we carry out an interpretation of the theory found in the different texts, studies, theses, news, articles, and in general all the possible information that supports the problem of the principle of solidarity (Martinez, 2010), in order to study and understand the problem thoroughly.

Method of legal hermeneutics: Continuing the line of interpretation, we confront the legal texts and decisions to make a comparison from the oldest to the most recent, with the conviction that the techniques and dedication necessary would allow us to be clear about what laws and jurisprudence to study, as well as the consistency they had with current judicial decisions.

2. DISCUSSION AND RESULTS

2.1. Solemn requirements to obtain the minimum pension guarantee in Colombia.

The objective of this chapter was to establish the legal requirements that are required to obtain the minimum pension in Colombia. To achieve what was proposed, a qualitative methodological approach was used, using inductive methods such as analysis and synthesis.

The minimum pension guarantee in Colombia was created with the purpose of safeguarding, protecting, and above all, being in solidarity with people who have earned in their working life a current legal monthly minimum wage (SMLMV by its initials in spanish) and who, at the time of retirement, and guided by the formula in general, as dictated by article 34 of Law 100, this salary would correspond to 65% of the worker's base contribution income and could increase up to 85%. Analyzing this panorama, if governed by the above, a pension allowance for a value of a legal minimum wage would not be achieved, which would lead to a detriment to the quality of life and the pensioner would not have the resources to meet their basic needs.

To access this figure, certain requirements are established that must be considered from each of the two pension regimes. The medium premium Pension Regime, currently headed by Colpensiones, stipulates that it guarantees a minimum pension to those who meet the established requirements for pensions established in article 33 of Law 100 of 1993, which are: 57 years of age for women and 62 for men, in terms of weeks of contributions 1300 for both cases, there is no distinction between men and women since they are required to have the same number of weeks of contributions.

It must be argued that pension regimes are the implementation of a state model defined and outlined within the framework of the political constitution, therefore, it is coherent to affirm that the economic benefits of the pension system, called minimum pension, constitute the effectiveness of the constitutional guarantee of the principle of solidarity which allows access to a benefit during the contingency of old age and poverty of the inhabitants of the national territory, thus, in the regime of average premium and individual savings with solidarity, this type of benefit usually exists.

In the Individual Savings Regime with Solidarity, the minimum pension guarantee is a mechanism in which members of the different RAIS pension funds contribute so that people who meet the conditions established by law, which are age and weeks, can finance a pension of a current legal minimum wage. So the requirements in this regime are the following :

- Have turned 57 years old for a woman and 62 years old for a man
- Have completed 1150 weeks worked.

Once the worker certifies the required prerogatives, the financing of the rest of the capital is completed through the GPM and can give access to the old-age pension in order to be certain that it would not be less than a minimum wage.

The pension fund is the one who has the obligation to care for and ensure the amount of time contributed by the worker, to have the entry and withdrawal dates in order, as well as the base contribution income with their employers given that the member made the required contributions. It is also the duty of the AFPS to ensure that employers pay the percentage that corresponds to them, since these are the technicians and experts in managing pension payments as required by Law 100 of 1993 when it gave them the way to operate legally.

2.2. The constitutional principle of solidarity as a benefit and support to obtain the minimum pension in Colombia.

Solidarity is defined as a value, it represents a mutual collaboration between individuals, which allows the overcoming of difficulties to be achieved through contribution, which reflects unity based on common goals or interests. For law, in the field of pensions, solidarity implies a relationship of shared responsibility or joint obligation.

The association of Magistrates and National Justice officials of the Country of Argentina in 2019, established a concept on the principle of solidarity in social security, as follows:

The principle of solidarity implies that men cultivate even more awareness of the debt they owe to the society in which they are inserted: they are debtors of those conditions that facilitate human existence, as well as the indivisible and indispensable heritage, constituted by the culture, scientific and technological knowledge, material and immaterial goods, and everything that human activity has produced. (Association M., 2019 P, 12)

Regarding the guarantee, the Constitutional Court rules through Sentence C-767/14 defined as a duty to the principle of solidarity that is imposed on all people in general by the sole fact of belonging to a social group, providing own effort for the benefit of other people belonging to the group or for collective benefit. The Court alluding that the greatest objective of solidarity as a duty is to impose on the members of a population the obligation to help their peers to safeguard their rights, except when it comes to people in a situation of manifest weakness due to their condition. physical, mental or economic.

Otálora against article 1 of Law 1106 of 2006 and 1 of Law 1421 of 2010 Reference: file D-10145/C-767/14 (Constitutional Court 2010).

The Ministry of Labor in 2016 provides us with an important concept where it interprets the function of the state in terms of the development of the principle of solidarity in the minimum pension. Claiming the following:

In the development of the principle of solidarity, the Government will guarantee to members who meet the requirements established in article 65 of Law 100 of 1993 the recognition and payment of a minimum old-age, disability or survivors pension equivalent to the amount of a current legal monthly minimum wage, completing the necessary resources with additional monthly sums borne by the Nation. (Ministry of Labor, 2016)

Lawyers Duque and Duque (2016), in their essay titled “The Fundamental Right To A Pension And The Principle Of Financial Sustainability: An Analysis From The Medium Premium Regime With Defined Benefit In Colombia” refer that the guarantee of effectiveness is one of fundamental rights, enshrined in the Political Constitution of 1991, especially in article 48 where the right to social security and all the guarantees that it expresses are enshrined, however, the shortcomings in the issue of coverage of this system were always mentioned. However, they also expressed the economic and pension deficit that was present at that time with certain data that they were able to obtain from the Comptroller General of the Republic in 2012.

Duque and Duque (2016) cited a very important topic which was the financial vulnerability of the Colombian general pension system; From this we can clarify that if there is no economic balance in the Colombian state, it will be very difficult to provide pension guarantees to taxpayers.

In the scientific article “Solidarity As The Foundation Of The Social Rule Of Law, Social Security And Social Protection In Colombia” Leonardo Cañón Ortégón, in 2017, envisions solidarity as a philosophical principle of Social Security and as an obligation of Colombians to comply with the foundations of the social rule of law according to the social security scheme, which has its origin in the Political Constitution of 1991 for the development of the social security and social protection model in its various declarations: pensions, health, risks, labor, social services, social protection and unemployment protection; also serving as a fundamental instrument to achieve the goals of social security and protection under state direction, regulation, surveillance and control, which leads to support for the most vulnerable individuals.

Solidarity is a value that has been instilled in us from the beginning in our lives, and the state as protector of our rights has the great job of guaranteeing it when an impact on our lives can be evident, such as the detriment to the vital minimum wage through the pension allowance when it may be less than the value of the SMLMV, but no less important is the idea that the State, through programs, laws and regulations, is the one who comes to help the people so that this help arrives through its solidarity nature as the case of the minimum pension guarantee.

2.3. Comparative study between Chile and Colombia regarding the applicability of the principle of solidarity in the minimum pension system.

Chile, is one of the pioneer countries in social security, at the beginning of the 20th century, in 1924, they designated a public policy for the management of coverage and affiliation conditions through provision funds, which turned out to be unviable with the passage of time and this is why in 1980 an individual capitalization model was founded based on savings and capitalization through voluntary savings.

In 2008, as a result of the high rates of poverty among the elderly and the low contributions of employees, the state began to assume half of the resources to be able to grant these pensions, according to:

The 2008 reform guarantees a minimum pension to all individuals belonging to the least affluent (poorest) 60% of the population, coverage and access to the pension guarantee regardless of their contributory history. This new program provides old-age and disability subsidies, financed from the general income of the Nation. (Chile, Superintendence of Pensions, 2010, p. 12).

In Colombia The G.P.M. It has its legal basis in Article 9 of the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights “Protocol of San Salvador”, which defines the right to social security.

Article 9 of the International Covenant on Economic, Social and Cultural Rights determines that everyone has the right to social security, the Universal Declaration of Human Rights, in its article 22, indicates that the State is responsible for ensuring that each individual who is within its territory, has the right to a life in dignified conditions and a full development of equality, and also the American Declaration of the Rights of the Person, which in its article 16 tells us about the purpose of social security as a right, is to safeguard old age in events that prevent them from obtaining means for their own subsistence.

The GEPMV has a constitutional foundation which is enshrined in article 48 of the Colombian Political Constitution of 1991 and which subsequently modified Legislative Act 01 of 2005, mentioning the guarantee of Social Security, stipulating that this is an unavoidable right and the State is responsible for guaranteeing the rights, the financial sustainability of the Pension System and for respecting the rights acquired in accordance with the law, assuming the payment of the pension debt that corresponds according to the law.

The G.P.M.C. was born in 1993 when Colombia adopted a dual pension system, where the Individual Savings Regime with Solidarity came into force, and in this, the State acted as a moderating body, delegating the administration of pensions to the private sector. Since these are based on a particular investment issue of old-age income, and in the event of a risk that a member may not have the necessary requirements to access it, the State also provides the minimum guarantee and takes the place of guarantor for those cases in which the savings are not enough for the worker due to the fact that he has contributed all the time on a current legal monthly minimum wage.

The pension allowance cannot be less than the value of a minimum wage, this is based on article 36 of Law 100, since it would be arbitrarily affecting the worker's vital minimum wage to be able to develop a life in decent conditions. However, there is an exception to the minimum pension guarantee established in article 84 of the same law for workers who earn more than the current legal monthly minimum wage.

The payment of the minimum pension guarantee will be made as follows:

Art, 83. Payment of the Guarantee: For people who have access to state minimum pension guarantees, such guarantees will be paid from the moment in which the annuity resulting from the programmed withdrawal calculation is less than twelve times the minimum pension in force, or when the annuity to be contracted with the available capital is less than the current minimum pension. (Law 100, art 83)

Colombia continues with the figure of Minimum Pension Guarantee, where the Guarantee Fund is responsible for the missing percentage to be able to supply a pension allowance for a legal minimum wage. In Chile since 2008, due to the large percentages of people requesting access to said guarantee, they prevented problems in being able to assume those costs and decided to only deliver it to 60% of the population with fewer economic resources, which leads us to see how in Chile They limited that solidarity to only one group in society.

2.4. The solemn requirements that are required to obtain a minimum pension in Colombia are a contrast to the benefit of the principle of solidarity.

The RAIS is forged with the savings generated from an individual account of the member and its corresponding financial returns, the principle of solidarity permeates it completely guaranteeing women who turn 57 years old, and men who turn 62 years old, that, by having 1,150 weeks of contributions, the national government will fill the gap to obtain a pension allowance for a value of a current legal monthly minimum wage, which will guarantee a life in decent conditions and without affecting their minimum living standards.

Villamil (2020) in his article published in Revista del Externado de Colombia highlights a very important point, which is that in the RAIS, 80% of its affiliates are within the first salary range, that is, those who earn 2 SMLMV or less, which allows us to conclude that there is a very low capitalization and leads to a greater extent to the use of the minimum guarantee pension figure since both the capital and the returns of the individual account are very low. Likewise, unemployment and informality rates cause contributions to the system to decrease because the contributions necessary to collect capital are not collected. Therefore, although the Minimum Pension Guarantee Fund is responsible for covering the shortfall for those who comply with the required contribution time, but do not have sufficient basic income to have a pension equivalent to a SMLMV, if the resources of this fund are exhausted, it is the State the one that must assume the financing with its own resources from the National Budget, that is, when the contribution in the accumulation stage is very low, higher resources are required from the Minimum Pension Guarantee Fund, in the case of the RAIS, and if this is scarce, it will be borne by the National Budget.

The Supreme Court of Justice, in ruling SL 1534 of 2019, whose presiding judge is Martin Beltrán Quintero, carried out a study on the case of a worker who, having met the requirements to obtain the GMP, had not been granted one year after completing the procedure because the pension bond office of the Ministry of Finance and Public Credit had not yet transferred the capital corresponding to the guarantee

to the AFP, therefore the court indicates that the AFP, when verifying the requirements fulfilled, must take only a period of 4 months to start paying the pension allowances, regardless of the internal procedure to collect from the State.

While the procedures for recognition of the minimum old-age pension guarantee are being carried out before the pension bond office of the Ministry of Finance and Public Credit, you can begin to pay it from the resources accumulated in the member's individual account, after recognition of the guarantee by the aforementioned Pension Bonds office, which must issue a ruling within a period of no more than four months. (Sentence SL 1534/2019).

The above is clarity of the effective management of the state when it comes to guaranteeing this figure in each of the workers who, by law, and having met the requirements, request it; Therefore, we can be certain that in terms of compliance with these events of the age and weeks of contributions, the Colombian can be sure by order of the Supreme Court of Justice that within four months he will begin to accrue his pension allowance for the value of a current legal monthly minimum wage.

CONCLUSION.


The state, as guarantor of a minimum pension in Colombia, plays a supportive role by contributing to workers who, due to their base contribution income, would not be able to achieve a pension allowance for the value of a current legal monthly minimum wage, establishing certain requirements. that once completed according to what has been investigated, it is granted without major trauma within a limit of four months, by jurisprudential mandate and legal protection.

It can be seen that in Colombia this figure is open to anyone who earns a minimum wage, and on the contrary, in Chile since 2008 it had to be limited to only 60% of the most vulnerable population since it could mean a high cost for the state that afterwards could not continue to supply and would lead to replacing this aid, therefore it was limited to the most needy; an idea that Colombia should begin to consider so that solidary constitutional protection is permanent and real for the most needy.

The idealization of a state that is guarantor, guardian of the rights of each citizen who belongs to it, leads us to look at each requirement from a perspective focused on reality where each of these constitutes a step or a truncated dream for a worker who contributes month by month, so that during his retirement time, he can enjoy resources to meet his economic needs, and ultimately if a person who earns a minimum wage has reached the age and the necessary weeks, the same status is fair and balanced with those who have fewer financial possibilities.

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