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RESEARCH ARTICLE

COLLISION OF PRINCIPLES AND LEGAL ARGUMENTATION: THE CASE OF THE COLLECTIVE RIGHT TO THE PUBLIC SPACE VERSUS THE RIGHTS OF THOSE WHO OCCUPY THE SPACE IN THE PURSUIT OF ECONOMIC ACTIVITIES, FROM THE DECISIONS TAKEN BY THE ADMINISTRATIVE TRIBUNAL OF SANTANDER

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ABSTRACT

This report presents the results of a professorial research that analyzed the concept of public space from their observation as a collective right, as well as from the perspective of the people who use it for economic purposes, for which reference was usedthe Public Policy formulated by the city of Bucaramanga (aimed at the recovery of the Public Space), the sentences handed down by the Administrative Tribunal of Santander and some Administrative Courts of Bucaramanga, in the period 2008-2015, also statements of the Constitutional Court and the Council of State in the same period. This to resolve the collision between the rights to the public space and the use of them for economic purposes; there where review theoretical and doctrinal references of some authors that address the legal arguments.

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INTRODUCTION

The Colombian legal system does recognition of a bundle of rights that in abstract they don't collide, but in the reviewing of specific cases it may occur collision between them. In this research report it presents the case of a collision between the collective right to Public Space in its doctrinal theoretical definition and the rights of persons that occupy public space to engage activities that cast them economic profit, for which reference was used the Public Policy formulated by the city of Bucaramanga in 2012 aimed to the recovery of public space, and decisions that have been handed down in response to this problem by the Administrative Tribunal of Santander and some Administrative Courts of Bucaramanga, also statements of the Constitutional Court and the Council of State. In these norms type principles and norms type rules collision events; there are a number of interpretive parameters that have been exposed by theorists of the legal argumentation and the theory of law. To make this analysis of judgments arguments have been taken some of these theories.

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MATERIALS AND METHODS

Considering the problem addressed, it became necessary to explain from the theoretical point of view the notion of the Collective Right to the Public Space, and the conception of those who make use of public space for economic purposes. Likewise, it was taken as referencethe Public Policy formulated by the city of Bucaramanga, aimed at the recovery of public space, and decisions that have been handed down in response to this problem by the Administrative Tribunal of Santander and some Administrative Courts of Bucaramanga, also statements of the Constitutional Court and the Council of State. The research is initially Hermeneutical, inasmuch as its proposed the study of law in mention from the both points of view, as much from a the theoretical point of view and from

the type of argument in decisions within the so-called popular actions regulated by law 472 of 1998 that were taken from the Administrative Tribunal of Bucaramanga. Similarly and considering that according to the question that the legal problem is hermeneutical type, the research has an analytical descriptive component, as in the identification of Jurisprudential Sub-Rules for the decision of the Popular Actions that intended the protection of collective right to public space, taking as reference the regional scene.

Methodological design

In the first moment a theoretical study on the on the legal and hermeneutical tools with which judges count to resolve the collision of rights was made; this theoretical study is supported on library resources, books, magazines, and documents available online. Similarly and according to the type of research, we had access to the jurisprudential sources, in order to analyze the treatment of collective rights in the national jurisprudence, both from the Council of State and the Colombian Constitutional Court, so that the access to the corporate rapporteur mentioned, favored the achievement of the objective in relation with the description of the principle from the national jurisprudence. To access the decisions of the Administrative Tribunal of Santander, we made a tracking of the first instance judgments issued by the Administrative Judges of Bucaramanga, wherebythe RAP was revised - register of Popular Actions and Group Actions that lead the Ombudsman in under expressed in Article 80 of law 472 of 1998; in this tool have been consigned different popular actions that have been brought forward in the Department of Santander, organized by subject, collective right designated as threatened or violated, filed, judicial authority that heard the case, and in general the most relevant information of the judicial protection.

After reviewing the judgments, it was evident that the latter instances that reached the Administrative Court of Santander, were not developed with an argumentative analysis towards the collision of rights but focused on the appeal filed by the popular actor who was economic incentive denied due to legislative change, so that it became necessary to attend the reading of the sentences of first instance in order to identify the arguments by trial judges for regarding the collision of principles. To analyze the failures were taken as reference some authors of theory of legal argumentation, in order to systematize information failures.

Additional sources:

- Web Vision System of the Ombudsman
- Regional RAP
- Rapporteur of the Constitutional Court, the State Council and Administrative Tribunal of Santander.
- Administrative Courts of Bucaramanga.

DISCUSSION

Concept of public space as a collective right

To build a concept of collective right to public space was taken as a starting point the review of the regulatory system to the extent that public space does not exist by itself (naturally), but is the result of a legal concept. It has as reference the Colombian legal system as far as it has been given the task of developing standards and addresses it in norms of legal and regulatory constitutional status. A first reference is enshrined in Article 82 of the Constitution which imposes a duty of the state to ensure the protection of public space, focusing on the interpretive form that the general interest prevails over individual interests. Consistent with the disposed on the Article 63 of the Constitution, that features the inalienable, indefeasible and imprescriptible use of the public property. Similarly, the Article 88 of the Charter stipulates that the defense of the collective rights as public space will be through popular actions. In the case, the law 472 of 1998, establishes the legislative development on the subject. For its part, Article 5 of Act 9 of 1989 defines the concept of public space as well as Article 17 of Law 388 of 1997 on incorporating public areas. Likewise, Law 388 of 1997, which has among its objectives the defense of public space, refers to multiple items to this right. However, Article 37 specifically mentions public space in urban actions.

SimilarlyThe Decree 1504 of 98 by which the management of public space in the legal system is regulated,describes in his article second and fifth a definition of what is meant by public space, Article 7 of the National Decree 798 2010 1083 2006 law, with regard to the road profiles:

Article 7. Elements of road profiles. In the planning, design, construction and / or adaptation of the urban perimeter roads municipalities or districts may provide that road vehicle profiles conform at least the sidewalk and the roadway. Additionally may contain the components of the road profile stated in section a) paragraph 2 of Article 5 of Decree 1504 of 1998 or norm that addition, modify or replace, as established in the land use plan and the governing rules in the matter. The route of pedestrian circulation may be form at least with the fringe of pedestrian traffic and the fringe of furnishing.

Paragraph. Profile elements of urban steps are subject to the regulations on retirement fringes issued by the Government, as provided by Law 1228 of 2008.

In the international ambit United Nations have identified some rights that are categorized as belonging to all but none at the same time, because they involve assets or resources that cannot belong to anyone and interest substantially to humanity way, precisely because of its importance to human species, its intangible, imprescriptible and have inalienable character. The common use of public space is protected by the Social State of Law, which includes not only the use by the community, but also the proper enjoyment of it. In fact, public goods must have the destination in accordance with the purpose of its nature, because the character of those not authorize the indiscriminate use of such spaces. Collective rights have been defined by the Constitutional Court "Are those through which compromised the rights of the community and whose range goes beyond the sphere of the individual or of the individual rights previously defined by the law, because for the second the legislature has provided its own rules; instead for collective interests, only with the issuance of Law 472 it was regulated in a general way, which was not limited only to enshrine general principles, but to effective granted the State and citizens instruments to coexist in a healthy and ecological environment. Indeed these interests affected in a homogeneous way the whole community, but the ownership of the action whose purpose is to return things to normal status, it's in each person head,

however that may be exercised by a certain group of people on behalf of the community when an injury to a right or common interest is violated by the actions of individuals or by public authorities…"

Similarly, the Council of State judgment proffered on 20 April 2003 by the Fourth Section, in the process filed as number 25000-23-26-000-2001.00317-01 with presentation by Magistrate Ligia Lopez Diaz, who said: "The art. 82 of the Constitution requires the State "to ensure the protection of the integrity of public space and its assignment to common use, which prevails over the individual interest" In those terms, it is clear that the use of means of vehicular or pedestrian traffic for the particular trade its illegitimate and violates the collective rights of those seeking to travel freely through the busy streets. However, the conflict that occurs with those who for various reasons engaged in informal trade on public roads and generally invoke their constitutional right to work also appears. The general interest to preserve public space takes precedence over the individual right to work, because the particular interest yields to the general and the State must ensure access for all citizens to enjoy and common use of such collective spaces.In accordance with Article 63 of the CP., Public Property is inalienable, imprescriptible and indefeasible, ie, that no individual can invoke the right of adverse possession over streets, squares, bridges or roads, or allege that they have acquired rights over them or any other public good.

Similarly there have been a number of jurisprudential developments by the Constitutional Court, which has been analyzed that although Article 82 of the Constitution favors the collective right to public space, should analyze other situations de facto that stress the rights and affect how they will be resolved. Above them will be mentioned in the corresponding paragraph.

Concept of public space from the perspective of the people occupying public space for economic purposes

The concept of collective right to public space remains the same from a legal point of view, however, those who occupy for the pursuit of informal trade, have called for reflection on the part of judges and in the case of Colombian Constitutional Court, have been taken sustained basis in international law, namely:

"This purpose had already been subject to international legal regulation. In 1944, on the threshold of the war, to meet the ILO 25 years of existence, the International Labour Conference adopted the Declaration of Philadelphia in which it is stated that labor is not a commodity and the obligation to promote noted in all the nations of the world programs of full employment and raising the standard of living of people. This harmonizes with the Preamble to the Constitution of the ILO, as the fight against unemployment and ensuring an adequate living wage is provided. In the Universal Declaration of Human Rights states that "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

In the ILO Convention 122 Article 1 °, initial part, it states: "1. In order to stimulate economic growth and development, raising living standards, to meet the needs of labor and solve the problem of unemployment and underemployment, each Member shall declare and pursue, as an objective of most importantly, an active policy designed to promote full, productive and freely chosen employment." Recommendation No. 1 of the ILO referred precisely to the unemployment. The Convention 2 of 1919 envisaged the operation of employment agencies. In 1934 and 1935 there were other recommendations of the ILO unemployment. The same happened in 1937 and 88 in 1944. The 1948 Convention provides that States shall establish a free public employment service. Convention 168 of the ILO on employment promotion and protection against unemployment speaks about the promotion of productive employment, of the contingencies covered, protected people, protection methods, the compensation to be allocated, legal administrative and financial guarantees. Convention 111 also refers to employment and is interesting in states that the terms employment and occupation include access to vocational training, such as counseling and admission to employment and various occupations.

And precisely international information serious treatment to be given to informal work is inferred. Thus the ILO[1], states:

"The potential of the urban informal sector to generate new and better jobs for local authorities represents a powerful tool. By the way, the urban informal sector often serves as a buffer device for vulnerable and marginalized urban poor population, but often underestimates its productive capacity. On the one hand, undoubtedly it seeks to strike a balance between creating new jobs and protecting the working conditions of those working. But on the other, improving working conditions in the informal sector may lead to an increase in productivity and income. Investments in the field of health, education and improvement of slums, can be excellent from a purely economic perspective. Consequently, the municipal authorities should compare more often generating potential sources of large work campaigns with the small companies. "In the past, most of the governments in developing countries considered the informal sector as a safety net that provides employment of low productivity and thus consolidated its role of poverty alleviation. It tended to consider the sector as a special target group, instead of trying to integrate the conventional economy. Moreover, their development potential was rejected. Instead of considering that the low quality of production in this sector was a problem to be solved, it is often argued as a reason to condemn him. Moreover, it is generally taken to be the parallel or underground economy who violates the regulations. Undoubtedly many countries have changed their attitude to the informal sector. Some has legally recognized; as well as their positive contribution, others have reluctantly accepted their existence, and many others, just tolerate and try to "adapt". There are also those who have even created new institutions of support for the sector. "[2]

The situation is so complex, in developing countires like ours that to integrate street vendors to a conventional economy, not only arise relocation plans, but arises the need for other options whose choice must be an indispensable communication between the authority that provides and addressee. What is not justified is the use of force, breaking any agreement and leaving concrete alternatives to those in good faith for a long time were occupying public space. Is serious, unjust and inhumane this treatment by force, when workers and their families, who have acted in good faith and are protected by

[1]Relying onBowles and Gintis.
[2]The future of urban employment, ILO, p. 40

legitimate expectations, are sent to a situation of "no work" without specifically be offered alternative solutions . (SU-360-99). For the employment integration of people with physical limitations, international standards is also wordy. They are, for example, the Declaration of Human Rights proclaimed by the United Nations in 1948, the Declaration of the Rights of Mentally Retarded Persons adopted by the UN in 1971, the declaration of the rights of people with limitation, approved by Resolution 3447 ; in 1975; Convention 159 of the ILO[3] Recommendation 168 of the ILO, items 1 to 14; Sund Berg's statement Torremolinos UNESCO in 1981, the declaration of the United Nations concerning persons with limited 1983. (T-364/99). It is only fair to protect disabled. And it's not just that they found suddenly in the total unemployment, with deteriorating for their way of life, which means the spread of poverty, which for the ILO is "morally unacceptable and economically irrational"[4]. (T-364/99)

In these cases the labor of protection cannot be disentangled from the reality of unemployment, which leads to state intervention, according to what is stated in Article 334 of the Constitution, precisely in one of its paragraphs states: The State, in particular, intervene to ensure full employment of human resources and ensure that all people, particularly those with lower incomes, have effective access to basic goods and services. " The objective must be protection such that the structural adjustment policies cannot reach dehumanization or less to increase the very serious problem of unemployment. To this end the guardianship judge their decisions, as a state official must make an integrated reading of Article 334, Article 25 on the right to work and Article 54 CP. The latter standard programmatic nature, it becomes an active disposition, pointing to the well-being immediate and the environment in which we live the employment, and pointing to the inhabitants of the Republic a right to something, framed within state intervention in the economy and collated with the clause of the rule of law , making the right to work in something that cannot be distant from the right to work. (T-364/99)

"Precisely the pronouncements of international organizations on employment policy towards informal workers, particularly they raise the participation of local authorities to treat this problem, and there is talk that not further depress the sector are viable as proposed: develop training, access to credit, preferential treatment in investment, exemptions, reducing the number and cost of administrative and regulatory procedures, among other examples. This sound management behavior is consistent with the human dignity of workers and lies within the parameters of social justice. "(Constitutional Court, SU-360-99). There is something that also inextricably linked to the right to work and the right to employment is the goal of both that is social justice, priority area in each country and society. Is social justice seeking secure employment and good quality jobs, and if this is not achieved its going to increase the poorness, getting caught in a vicious circle "where low incomes are the cause of education, nutrition and health care for poor quality, which in turn leads to low productivity and low incomes ".[5] Therefore justice is there an active policy for the unemployed to retrain. (Idem)

Public Policy of the Municipality of Bucaramanga, aimed at recovering the Public Space

To adopt public policy that would respond to the problem of invasion of public space in different sectors of Bucaramanga, the administration took as reference standards of constitutional, legal and regulatory range namely:

Art. 315 CP. (Mayors)
Art. 1 CP. (Social State of Law)
Art. 63 CP. (Public goods)
Art. 82 CP. (Ensure Public Space)
Art. 311 CP. (Municipio: territorial development)
CONPES 3718 (2012) Build friendly cities

Law 1551 of 2012 Mayor of the Municipality: direct administrative action.

2003 T-772 (right to public space reconcile with the right to work)

Agreement 035 2002 Create public space advocacy

Municipal Decree 214 of 2007, Art. 85 (public space occupation hinders vehicular mobility, threatening life and safety of people).

Development Plan 2012-2015 Reintegrating informal to the formal processes of commercialization of products, processes entrepreneurship and job engagement sellers.

As a result of this regulatory review the Municipal Administration issued Decree 179 of 2012 by which provisions for the recovery and preservation of public space and Resolution 0544 of 2012 adopted by which the recovery of public space unduly occupied by informal vendors is ordered .

It is highlighted that provision of public policy its given by the following programs:

- Relocation program in malls and market places owned by the Municipality of Bucaramanga and temporary fairs and organized popular markets (...) for 2000 street vendors who improperly occupy public space.
- Free training SENA, IMEBU, Renmin University
- Undertake Future Program
- Advise to process subsidy to the compensation fund for VIS or VIP., The Municipality of priority through INVISBU grant a supplementary allowance for housing for the family.

With the implementation in 2012 of the measure issued by the Mayor of Bucaramanga[6], one media coverage of the traditional struggle between street vendors and the administration was generated for the rights that everyone claims it should be favored when be claimed recovery the public space.

[3]Article 7 of the Convention 159. "The competent authority shall take measures to provide and evaluate services of vocational guidance and training, placement, employment and other related services to the disabled persons to secure and retain employment and progress in the same..."

[4]The ILO argues that "it is important to provide a minimum of economic security to the poor because they have no other way to fend for themselves." Employment in the world, Geneva, February 22, 1995

[5]The future of urban employment, Second United Nations Conference on Human Settlements, p. 15

[6]Decree 0179 dated September 3, 2012 by which provisions for the recovery and preservation of public space in the city of Bucaramanga and Resolution 0544 of September 5, 2012 are held.

Knowing the background discussion from the academia, it involves the identification of several legal institutions that are involved in the controversy on the one hand, and on the other, the study of decisions taken by the constitutional court, which highlights the reason to privilege a thesis on another in the collision of interests. The study of decisions taken by the municipal administration, allow a first approach to the rules built in the jurisprudence of the constitutional court and some decisions of administrative justice in the region, in this last case it comes to orders for the recovery of the public space as a result of the popular action control. Specifically, statements such as the T-364, T-754 and T-940 of 1999, among others, have chosen to try to resolve this conflict through concordats between two precepts that seem at first shocking moment, through the application of good faith and legitimate expectations, which mentions that "according to which the administration to fulfill its duty to protect the public space, without thereby ignoring the right to work of people to be affected in the recovery process space public "(Colombian Constitutional Court, 1999).

Therefore, "it has ordered that the respective authorities implement plans and programs for the harmonious coexistence of interests that collide, since neither can ignore", as will be seen, "the social phenomenon involving the informal economy" (T -778 1998). The provisions in reference (Decree 0544 of 2012, and Resolutions 0179, 2012), regulate a process for the recovery of public space in some areas of the city of Bucaramanga, and in turn ordered the start of the execution of administrative action in mention. After reviewing the decisions adopted by the Municipal Administration, it's evident the need to consider their adjustment to the constitutional subrules unsettled in the judgment, which is part of a vast and peaceful jurisprudential interpretation, which relates in particular to the guarantee an agreed solution on real alternatives offered to the public subject to administrative action, to ensure the safeguarding of fundamental rights of people who are occupying public space.

Under the procedure set out above in Judgment T- 772 of 2003, which in turn reflects the parameters set in the judgment SU- 360 1999 analyzes these measures to be adopted by local authorities for the defense of public space without ignoring the social rights of citizens, meeting the following rules. Be preceded by a careful analysis of the evolution of the real social and economic situation of the recipients of such policies, programs or measures,

- Ensure that economic alternatives offered to informal vendors correspond in scope and coverage to the changing dimensions of social and economic reality for which policies, programs and measures in question be applied.
- Ensure that such economic alternatives are offered to their recipients, prior to the passing of eviction and confiscation measures, aimed at recovering of public spaces, giving priority to the stationary half- stationary vendors.
- Cannot be advanced in such a way that injuries disproportionately the right to survival of the most vulnerable poor population sectors, and so that those who are deprived not have economic opportunities in the formal sector only legal means of subsistence at their disposal. "

We can see prima facie that the referenced administrative acts, in its content have tried to collect the jurisprudential positions of the Honorable Constitutional Court. But as you can see there is no clear attention to a part of the considerations of the Honorable Court, especially to what regards participation, because that is an unavoidable principle for decision-making related to the problem that is here under discussion, the representatives of the sellers should participate in the formulation of policy changes in which they will be affected; it is not unilaterally produce no concerted deals, but the parties concur in the construction of the solution. For the foregoing it is relevant to deepen the analysis of court decisions, because between arguments and orders contained in failures, we will highlight the reason to favor one or the other right. On the other side is the identification of the nature of the right to work, without entering into a strict analysis of this right, for example it can be seen here that from its connotation of social law, on the other hand is the public space.

RESULTS

This allows us to observe that the right to work, the principle of legitimate expectation, the right to public space, are the subject of protection or denial by jurisdiction, and know the argumentative resources of regional judges to decide on such or that sense is a task in this investigation. In this context we must understand that these conflicts are handling rights whose hermeneutics requires different from the traditional formula, the Constitution has driven this formula for an interpretive paradigm change, a matter that must be developed in this research from a theoretical point of view.[7] For to get available resources, and the information on how many popular actions were promoted with the interest of recovering the public space and the second instance decisions taken by the Administrative Court of Santander that identify the arguments proposed by the court to resolve the conflicting interests, it is a must step to solve the on the general objective that were proposed. Is important to note that the study and analysis that is intended in this research is based on the decisions of second instance of Administrative Court of Santander about the popular actions, and their legal reasoning. The RAP regional advocacy was consulted and the following figures were obtained between 2006 and 2014[8]:

Analysis of selected judgments and arguments proffered by the Administrative Tribunal of Santander and some trial courts

In the review of statements that specifically addressed the investigation focus, five second instance proffered sentences by the Administrative Court of Santander on appeal were refined, and considering that the court came mainly in the second instance the requests of the popular actors who sued the

[7]Alluding to the explanation on the interpretive paradigm changes by strengthening constitutions, using as source the material of Ricardo Garcia Manrique (Garzón, Iron, Peces Barba, 2010 pp. 15) he states that: The changes affect the system of sources in the the text and the constitutional jurisprudence presence, and gain strength against the laws; affect how to interpret the rules, because the material and open character of constitutional norms requires a kind of much more complex than the traditional legal reasoning; and affect how to apply them, which often requires not only ponder and subsume.

[8] We took as a starting point the 2006 year , because in that time began to know about the popular actions against public entities, the administrative courts and considering that the present study is developed to analyze decisions of the administrative court in the second instance, from 2006 it would be the court the closure regarding class actions in the region.

The decisions that were reviewed are mentioned below:

Decision proffered by	Serial	Date	Claimant	Defendant
ATS. MP. Julio Edinson Ramos	2004-1993-01	29 de abril de 2008	Gennier David Castellanos Gamboa	Municipio de Bucaramanga, Omar Agredo
ATS. MP. Milciades Rodríguez Quintero	68001233100020050212l-01	04 de marzo de 2010	Fabio Alberto Ortiz Arenas	Municipio Bucaramanga Y Dirección de tránsito de Bucaramanga
ATS. MP. Julio Edinson Ramos	2010-044-01	13 de enero de 2012	Marcos Fabián Almeida	Municipio de Girón
ATS. MP. Fredy Alonso Jaimes Plata	68001333100400110013501	16 de mayo de 2014	Luis Eduardo Lemus	Municipio Bucaramanga Y Dirección de tránsito de Bucaramanga
ATS. MP. Milciades Rodríguez Quintero	68001233300-2014-00495-00	7 julio de 2015	Frank Gonzalo Pérez Uribe	Municipio Bucaramanga Secretaría De Interior
Juez Once Administrativo	Sr.	30 de marzo de 2007	Sn.	Municipio de Bucaramanga
Juez 11 Administrativo Claudio Olarte Álvarez	68001232400420006001 03-00	25 de septiembre de 2008	Gustavo Alberto Albarracin Cadena	Municipio Bucaramanga, Dirección De Tránsito, Martha Liliana Torres Barreto
Juez 13 Circuito Administrativo Nelly Martiza González Jaimes	2005-2121	22 de julio de 2009	Fabio Alberto Ortiz Arenas	Municipio Bucaramanga Y Dirección de tránsito de Bucaramanga
Juez Primero Administrativo Oscar Carrillo Vaca	2010-0062-00	5 de abril de 2011	Iván Darío Rincón Huertas	Municipio de Piedecuesta Y Cuerpo De Bomberos
Sn.	2010-00253-00	8 de agosto de 2011	Javier Alfonso Álvarez Muñoz	Municipio de Bucaramanga,
Juez 4 Administrativo Iván Mauricio Mendoza Saavedra	6800133310042010-000334-00	23 de noviembre de 2011	Leonardo Alfonso Garzón Ramírez	Municipio de Bucaramanga
Juez 5 Administrativo Eyni Patricia Aponte Duarte	2010-00070	27 de febrero de 2013	Jhon Jairo Quintero Fernández	Municipio de Piedecuesta
Juez 7 Administrativo de Bucaramanga. Jesús Eduardo Rodríguez Orozco	2011-00135	22 de marzo de 2013	Luis Eduardo Lemus	Municipio Bucaramanga Y Dirección de tránsito de Bucaramanga
Juez 5 Administrativo Eyni Patricia Aponte Duarte	2010-00213-00	31 de marzo de 2014	Mariluz Sepúlveda Barrera	Municipio de Bucaramanga
Juez: Jorge Andrés Otero Sandoval	6800133333003-2013-00157-00	24 de julio de 2014	Beatriz Ramírez Esparza	Municipio de Bucaramanga- Defensoría Del Espacio Público

Source: own creation.

recognition incentive denied in the first instance, and as no were a special mention to the conflict of interest between the informal vendors who claim their right to occupy public space for economic purposesand the and citizens who are affected in their right to use and enjoy the public space; for this ten second instance[9] decisions were reviewed to review the arguments. The arguments proffered by both courts and the judges of second instance, maintain a differentiated line of argument that in the events in which occupants are informal vendors and when they are traders who are in the formal sector. In the events in which traders who are in the formal sector invade the public space by "expanding" the area of their business, immediate the judicial decisions order the recovery of public space, returning to the community, as in the case of car wash and chickens sales. In the case of informal vendors decisions of second instance refers mainly to the arguments given by the Constitutional Court in the Judgment SU-360 of 1999, that order to the municipal authorities to take measures for the relocation of the informal vendors. These arguments are consistent with the disposed on a social state of law, that must be guarantee of all the rights, privileging the human being with all the dignity that deserves such recognition. Similarly, it is ordered, the reclaim of the public space, to the extent that favor those people in circumstances of manifest weakness who are forced to take to the streets in search of getting provided of the minimum living condition through this work

[9]Proffered by the Administrative Tribunal of Bucaramanga.

Conclusion

The collective right to public space and the right to work has a constitutional status recognition with legislative, jurisprudential and regulatory developments. In the present investigation we show how there are two views (the citizen to access the collective right to public space and citizens who go to these places to find source of livelihood). Each of the participants has strong arguments against the implications of ignorance of the law, inactivity of the administration and the social problems that exists with each of the situations that arise when public space is invaded by hawkers or stationary sellers. Likewise, they were taken as a reference the arguments given by the Constitutional Court that part of a review of international standards in accordance with commitments made by the Colombian government and the way it has done or not effective. In the tutela actions reviewed by the Constitutional Court, it is evident that in the Colombian territory the presence of hawkers and stationary vendors are presents in large and middle cities, and because of the inability of formal companies to generate work sources for the number of people living in cities, the lack of academic training needed by most people to meet the requirements of the formal sector to access sources of employment and constant migration (voluntary or forced) of people in the rural sector of the city as well as the high unemployment rates, that in the Colombian the Constitutional Court found it as a chronic situation.

Under these grounds the Constitutional Court to resolve the collision of principles is based, and finds that there is a group of citizens who support the occupation of public space, and structured the thesis that the citizens who are supported under the principle of legitimate expectations [10] should be protected their right to work. However, the irregular situation of occupation of public space by street and stationary vendors must be corrected through the generation of public policies to correct that forced them to settle in the street to derive their livelihood, This has been understood by administrations by defining relocation sites dedicated to the commerce. On the locally sentences that were revised, it was evident that some vendors have their own place on special areas destinated for the commerce, but they keeps going out to sell in the street, this is an additional situation that touches on the civic culture theme, insofar some people prefer to shop in the street, than to go to sites intended for trade. This situation was not analyzed in the judgment, also has not been mentioned in the generation of public policies aimed at correcting these problems. Finally, it is important to note how the Court in the judgment of 2015 introduces the concept of minimum living in the defense of the rights claimed by the informal saleswoman at the nearby place to Cartagena called Bazurto sector.

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[10] Supported the principles of legal certainty (Articles 1 and 4 of the Constitution), respect to the act, and good faith (Article 83 of the Constitution). That is why confidence in the administration is not only ethically desirable but legally enforceable. (SU-360 1999).
Thus informal traders may rely on the aforementioned principle of legitimate expectations, if they prove that the actions or omissions of the pre-order vacating administration allowed them to conclude that his behavior was legally accepted, so those people had certainty that "the administration will not require more than strictly necessary for the accomplishment of public purposes pursued in each case" (Judgment T-617 of 1995 MP. Alejandro Martinez Caballero).

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