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Una nueva mirada de nuestro ordenamiento territorial a través de la reglamentación de los Esquemas Asociativos Territoriales

A new look at our territorial ordering through the regulation of Territorial Associative Schemes

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RESUMEN

El ordenamiento territorial en Colombia ha marcado uno de los puntos más relevantes al momento de tomar decisiones trascendentales como ha sido la expedición de la nueva constituyente o los distintos acuerdos y tratados comerciales o para la terminación del conflicto armado interno. En ese sentido, conocer la reglamentación actual de los Esquemas Asociativos Territoriales y la participación que estos tienen a raíz de la expedición de los acuerdos para una paz estable y duradera firmados en el año 2016 nos permitirá entender nuestro modelo actual. A través del presente artículo se muestra la importancia de los esquemas asociativos, su aparición en nuestro ordenamiento territorial, la relevancia que tiene el Decreto 1033 de 2021 y los retos a los cuales se enfrentan los esquemas asociativos con su nuevo rol territorial.

Keywords:

Territorial planning, royalties, post-conflict, territorial entities, peace agreements, schemes.

ABSTRACT

The territorial ordering in Colombia has marked one of the most relevant points at the time of making transcendental decisions such as the issuance of the new constituent or the different agreements and commercial treaties or for the termination of the internal armed conflict. In this sense, knowing the current regulations of the Territorial Associative Schemes and the participation that these have because of the issuance of the agreements for a stable and lasting peace will allow us to understand our current model and its challenges. Through this article, the importance of associative schemes is shown, their appearance in our territorial ordering, the relevance they have for the current moment and the challenges that associative schemes face with their new territorial role.

1. Introduction

The territorial Partnership schemes correspond to historical figures that date back to 1810 when, in minutes such as that of the extraordinary Cabildo of that same year, concepts of territorial management were established through intermediate entities formed under the principles of freedom and autonomy that would adapt to the particular needs of each territory, since the models brought from Europe - especially from the time of the Spanish conquest - sought to cover the population centres and the communities that were built around them.

Regardless of the form of organisation found in the following years, both in centralist and federalist governments, territorial political divisions were established, given that the extension of the Colombian territory required a continuous presence in the territory to preserve territorial extensions and the exercise of sovereignty.

The 1991 constituent assembly did not overlook this situation, considering that territorial planning constituted one of the pillars of development and therefore had to be studied in detail for the new constitutional model, specifically in a form of state that seeks to be closer to the territories and to detach functions and competencies from the central level, for which a special commission was set up, "The Commission for Territorial Planning", which presented constitutional reform project number 14 by Orlando Fals Borda and Héctor Pineda.

It is for this reason that from the promulgation of the 1991 Political Constitution and onwards, the territorial entities and their Partnership forms, as corresponds to the study of the Territorial Partnership Schemes, will take on a truly exceptional importance, which will allow us to consecrate the model under construction that currently prevails in our country, and the changes that have been needed in order to adapt the institutions to the real needs of the population and of the territories themselves.

Discussion Analysis.

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Prior to the enactment of the 1991 National Constitution, there was already the possibility of grouping two or more municipalities for the provision of services through such forms as associations of municipalities, planning provinces and/or metropolitan areas, among others. Through Law 1 of 1975, which deals with the Associations of Municipalities, the possibility of using Partnership models for the fulfilment of the purposes of the State was regulated. In accordance with the law, the Partnership schemes were constituted as instruments used to achieve alliances between territorial entities, especially municipalities, seeking to take advantage of the resources allocated, strengthen local development and achieve a better articulation of the territory through supra-municipal alliances.

This is why the National Constituent Assembly established a territorial planning commission to study central and federal figures, and their intermediate figures such as decentralisation, in order to establish an ideal model taking into account the needs of the territory.

However, and despite the conclusions reached by the commission, given the urgency of issuing the new constitution and the arduous work that the territorial division would entail, as can be seen in the 1991 constitutional text, the territorial forms that came from the previous constitution, totally centralist in nature, such as the municipalities and departments, were maintained, but leaving the possibilities of creating regions and provinces to the congress.

It is for this reason that the issuing of complementary regulations was not long in coming; through Law 136 of 1994 "whereby municipal activity is regulated", the terms that allow the formation and operation of municipal alliances and the use of associativity were established, indicating the existence of associations of territorial entities organised as administrative entities under public law, with prerogatives granted by law that are constituted as independent of the entities that make them up and that are governed by their own statutes. Subsequently, through ordinary laws such as Law 715 of 2001, the existence of territorial Partnership schemes was reiterated, allowing for the specific provision of services, the promotion of territorial development, among other competencies and purposes that corroborate the existence of these hybrid figures of our territorial planning.

Now, and after twenty-two years of promulgation and entry into force of our 1991 Constitution, on 29 June 2011 the long-awaited Organic Law on Territorial Planning - LOOT was signed, which came to complement those territorial planning points that the National Constitution left in the hands of the legislator. This law regulated some of the existing gaps in the so-called Territorial Partnership Schemes, the capacity for decentralisation and the recognition of autonomous competences for the latter, as stated in Article 3.3 of the aforementioned law: "The distribution of powers between the Nation, territorial entities and other Partnership schemes will be carried out by transferring the corresponding decision-making power from the central State bodies to the relevant territorial level, as appropriate, in such a way as to promote a greater capacity for planning, management and administration of their own interests, guaranteeing on the part of the Nation the necessary resources for their fulfilment".

Since the Territorial Planning Law, the legislator on the one hand recognises the existence of territorial Partnership schemes as fundamental components of the territorial organisation in Colombia, and also establishes that competences may be assigned, giving way to the necessary recognition of a regional model that allows for planning in accordance with the territory and a better distribution of resources; This situation is reflected in subsequent regulations such as Law 1551 of 2012 and Law 1962 of 2019, among others, which regulate aspects related to regional figures, the existence of provinces for the planning and management of interests, and the importance of Partnership models to achieve state objectives.

In 2016, our country experienced a historic moment, which would represent a new era, at least for what was new so far in the territorial planning, which is extracted from the signing of the peace agreement with the Revolutionary Armed Forces of Colombia (FARC - EP), through the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace, which was signed on 12 November 2016; One of the most controversial points of the agreement, which given its relevance was included in point one of the peace agreements, is precisely related to the territorial and Partnership development of the country through the need to carry out a Comprehensive Rural Reform.

The development of the territory identifies one of the crucial points in determining state policy, given that the defence of peasant, agrarian and environmental policies is a convergent point between the different organisational models and the participation that each scheme will have according to the territorial level in which it is located. It is for this reason that the peace accords seek to materialise the constitutional precepts that guarantee the full development of peasant ways of life, the conservation of ancestral territories, the conservation of traditions and cultures that revolve around the use of land, and that seek to improve the conditions of the countryside to close the gap with the cities and population centres.

The consequences of the comprehensive rural reform led to the analysis of the territorial Partnership forms that could become relevant in the territorial system during the implementation stage of the agreements, adapting them through the prioritisation of territories under a new territorial approach, which gave way to the creation of the Territorially Focused Development Programmes - PDET, regulated through Decree Law 893 of 2017, which is directed through the Territorial Renewal Agency, and setting within its field of action the identification of the territory through environmental, social, cultural and productive approaches, the need for differentiation in relation to the vocation of soils and vulnerability of the territories, the realization of diagnoses to coordinate common aims of the territories and seek Partnership alliances that allow improving the forms of production and therefore the quality of life, and of course the implementation

of the participation of local actors and communities in decision making.

The work entrusted to the PDETs constitutes the historical work of demarcation of territorial needs, which was suggested by the territorial planning commission as early as the constituent assembly itself, and which only after the signing of the peace accords was proposed as a need to collect and understand the initiatives from the community level, with community and village participation in order to establish needs and build plans based on the needs of the territory.

From this moment on, and under the need for new Partnership forms that allow us to get to know the needs of the territory for the implementation of the PDET, the creation of sub-regions is established, made up of the 170 municipalities prioritised in the national territory, making it clear that our territorial system contains gaps that prevent us from covering the needs of the territory, having to resort to territorial Partnership schemes, as in this case the sub-regions, in order to group the territories affected by the armed conflict and state neglect and implement policies of the regional order.

Subsequently, in 2019, under Law 1955, by means of which the 2018-2022 Development Plan was adopted, a specific section on Territorial Partnership Schemes was developed, which became the new pillar for the regulation of the Partnership figures, as indicated in Article 249: "TERRITORIAL PARTNERSHIP SCHEMES (EAT)). The formation and registration of the associations of departments, districts, municipalities; planning and management regions referred to in Law 1454 of 2011, will be carried out in accordance with the following procedure: i) Issue of the departmental ordinance, municipal and/or district agreement of each of the territorial entities concerned, authorising the governor or mayor to form the corresponding Territorial Partership Scheme (EAT).; ii) Signing of the inter-administrative agreement with the territorial entities through which the respective EAT is formed; iii) Document of the statutes that will regulate the formation and operation of the EAT in accordance with law 1551 of 2012, including the description of the assets and contributions of the entities that make up the respective EAT; iv) Adoption of a medium-term strategic plan containing the aims, goals and lines of action for which the EAT is formed; v) Adoption of a medium-term strategic plan that contains the aims, goals and lines of action for which the EAT is formed; vi) Adoption of a medium-term strategic plan that contains the aims, goals and lines of action for which the EAT is formed; vii) Adoption of a medium-term strategic plan that contains the aims, goals and lines of action for which the EAT is formed. Once formed, the EAT must register the formation agreement and its statutes in the Register of Territorial Partnership Schemes set up for this purpose by the national government, which may define the requirements, conditions and procedure for the provision of the necessary information. Territorial entities, through the EATs formed in accordance with the procedure described above and constituted as a legal entity under public law, may submit investment projects of regional impact to the Collegiate Administration and Decision-Making Bodies (OCAD), and be designated as their executors, in accordance with the current and applicable regulations. In order to submit the project, it must have the favourable opinion of the mayors or governors, as the case may be, of the territorial entities that make up the EAT. Without prejudice to the provisions of Law 1454 of 2011 and Law 136 of 1994 and the rules that modify, complement or regulate them, the EATs may provide public services, carry out their own administrative functions or those delegated to them by the territorial entities or the national level, execute works of regional interest, perform planning functions or execute integral development projects."

With this regulation and the possibility of signing the so-called territorial pacts between entities, significant advances are made in terms of territorial strengthening, the active participation of Partnership schemes in the construction of the territory, and the recognition of the importance of Partnership systems at the time of covering sustainable projects in territories with common and similar conditions that strengthen the territorial model through the regional approach. Likewise, the changes generated in the royalties system, through subsequent regulations such as Law 2056 of 2020, which establishes a percentage for the financing of regional projects and the possibility for Partnership schemes to participate through this Regional Fund, and the guarantee of resources to be executed by Partnership schemes, mean that we are facing a "new era" of territorial Partnership schemes, with greater recognition, greater powers assigned and highlighting the importance of Partnership systems for the generation of development.

On the occasion of these new developments, Decree 1033 of 2021 is issued, by which Title 5 called "Territorial Partnership Schemes" is added to Part 2 of Book 2 of Decree 1066 of 2015, Sole Regulatory Decree of the Administrative Sector of Interior, in order to regulate the operation of the Territorial Partnership Schemes - EAT, for which are designed among others: Procedures for the creation of new territorial associative schemes, the design of medium-term strategic plans (PEMP) that allow the planning of projects to be covered from a regional approach, the updating of requirements for existing schemes, and the configuration of the Register of Territorial Associative Schemes with the Ministry of the Interior, as a way of determining the number of existing schemes, the municipalities that make them up and the strategic plans that allow them to participate in royalty resources.

Thus, territorial associative schemes are currently regulated, and are becoming increasingly better positioned within the territorial entities, opening space in the form of territorial organisation, even though they are not recognised as territorial entities, as they do not have the attributes of administrative, political or financial autonomy, generating development based on their competencies.

The municipal entities, as the founding entities of the Colombian territorial system under the organisation of the Social State of Law of 1991, were not prepared to exercise their competences autonomously without training, instruction and economic strengthening exercises that would allow municipalities, especially basic municipalities - of the fifth and sixth category

- to achieve the provision of services and development of the competences assigned by the constitution; However, the existence of territorial associative schemes has allowed many of these municipalities to create alliances with others of the same categories, to create strategic alliances that allow them to cover the needs of the territory, and the provision of services together as is common in the different metropolitan areas and associations of municipalities in the extensive territory.

In this sense, the Territorial Associative Schemes have been a life-saver for municipalities over the years, and given the need to reorganise the territory, they have been framed by recent legislation as associative figures that can help fill the gaps in the state, which were not given such importance in the issuing of the organic law of the territory, but given the possibilities established in the National Constitution, and given that the territory itself and the community processes and work with local actors, have allowed for the regulation of these figures as necessary entities in our Colombian territorial planning.

2. Methodology

This is quantitative research with a descriptive design, the aim of which is to gain insight into prevailing situations and customs through accurate descriptions of activities, processes and people (Deobold B. Van Dalen and William J. Meyers, 2006). The researcher collects data to analyse the results to extract the sections that contribute to the creation of the document.

We will work with a strategic population as a direct source of information (public servants of territorial entities), for which reason a sample is not determined, given that the personnel studied are representative in order to be able to acquire the information.

n order to carry out this research project, the following techniques will be used: Documentary review and interviews to learn about the challenges of associative schemes at present.

In order to analyse the data collected quantitatively, graphs and frequency tables will be used to carry out data analysis as the statistical basis for this research.

3. Results

Information is being collected on the associative schemes in the new territorial model established by the 1991 constitution, the differences between the centralist models of 1886 and the current decentralised model. In each case, the role of the associative figures, the benefits that have been obtained and the distribution of competences were reviewed. On the other hand, the historical existence of intermediate and planning figures in the different centralised and decentralised models was reviewed, as well as the competences assigned to them and the limitations that this figure has had until the issuing of law 1033 of 2021.

This research is relevant when the state seeks to use figures that not only allow it to have a presence throughout the national territory, but also to have the greatest possible autonomy in decision-making, independent of the approval of the central level.

Likewise, the participatory exercise of the associative schemes with royalty resources will mark the future of the budget allocations, the percentages of which will be established according to the success and impact of the projects in the communities involved.

4. Conclusions

The origin of the territorial divisions was specifically focused on ways to maintain not only control of the territory, but also to be able to provide resources to meet the needs of the population living in each of the corners of the national territory. Different forms of organisation were experimented in Colombia, both in the centralist cohort and in the federalist attempts to divide the territory into territorial entities that were adjusted to the needs of the population, maintaining the intermediate entities in order to promote economic and social development.

As it became evident, the territorial organisational model of the National Constitution did not express or reflect territorial needs, with significant gaps existing and being maintained between basic municipalities, especially in areas of armed conflict, and the cities and large municipalities.

However, with the signing of the peace agreements, the creation of the Development Programmes with a Territorial Approach and subsequent regulations, the associative role and regional approach of our territory has been highlighted, which allows us to highlight the organisational shortcomings of our current model, resorting to figures such as associative schemes, to regional and supra-municipal models to get to know and identify the needs of the territories, through participatory processes directly with the communities which, although they have existed and coexisted with the traditional territorial planning model, did not have regulations or participation such as the one currently highlighted and which configures advances in the construction of our ideal model.

The territorial associative schemes should be considered as fundamental entities of the Colombian territorial planning, as they are part of its development, they have promoted the fulfilment of the state purposes and especially they have been the support of the basic municipalities to keep themselves on their feet and seeking to improve the conditions of the territories and supply the needs of the population; the associative schemes represent solutions and therefore the importance of the study of these organisational figures.

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5. References.

Asamblea Nacional Constituyente. (1991) Gaceta Constitucional No. 4. Bogotá D.E.: Imprenta Nacional.

Asamblea Nacional Constituyente. (1991) Gaceta Constitucional No. 5. Bogotá D.E.: Imprenta Nacional.

Asamblea Nacional Constituyente. (1991) Gaceta Constitucional No. 7. Bogotá D.E.: Imprenta Nacional.

Asamblea Nacional Constituyente. (1991) Gaceta Constitucional No. 8. Bogotá D.E.: Imprenta Nacional.

Asamblea Nacional Constituyente. (1991) Gaceta Constitucional No. 9. Bogotá D.E.: Imprenta Nacional.

ACUERDO FINAL PARA LA TERMINACION Y LA CONSTRUCCION DE UNA PAZ ESTABLE Y DURADERA. 2016.

ALFONSO MUNERA CADAVID El fracaso de la nación. Región, clase y raza en el caribe colombiano (1717 - 1810). Bogotá: El Ancora Editores. 1998

AMADO GUERRRERO y ARMANDO MARTINEZ. La provincia de Guanentá: orígenes de sus poblamientos urbanos. Escuela de Historia UIS. Bucaramanga. 1996

AUGUSTO HERNANDEZ BECERRA, Ordenamiento y desarreglo territorial en Colombia, Bogotá, Universidad Externado.

BERNARDO RAMIREZ. Autonomía y el Estado Regional en Colombia, Barranquilla: Ponencia presentada en el Conversatorio "Para qué Región Caribe" realizado por la Presidencia del Senado de la República, 2010.

DIEGO YOUNES. Panorama de las reformas del Estado y de la administración pública. Bogotá: Centro Editorial Universidad del Rosario, 2004.

HANS KELSEN, "Teoría general del Estado," Editora Nacional, México.

JORGE IVAN RINCON CORDOBA, Planes de Ordenamiento Territorial, propiedad y medio ambiente. Universidad Externado de Colombia.

ORLANDO FALS BORDA. La insurgencia de las provincias. Hacia un nuevo ordenamiento territorial en Colombia. Bogotá. Universidad Nacional. 1988

Organización de Naciones Unidas (ONU). Agenda de desarrollo sostenible. 25 de septiembre de 2015

PAULA ROBLEDO SILVA, La autonomía municipal en Colombia. Bogotá, Universidad Externado de Colombia, 2010

Ley 136 de 1994, Bogotá, Congreso de la República,1994.

Ley 1454 de 2011, Bogotá, Congreso de la República, 2011.

Ley 1551 de 2012, Bogotá, Congreso de la República, 2012.

Decreto-Ley 893 de 2017, Bogotá, Congreso de la República, 2017.

Decreto 1066 de 2015, Bogotá, Congreso de la República, 2015.

Decreto 1033 de 2021, Bogotá, Congreso de la República, 2021.

Corte Constitucional de Colombia, Sentencia C-1258 de 2001. Magistrado Ponente. Jaime Córdoba Triviño. 2001

Corte Constitucional de Colombia, Sentencia C-259 de 2008, Magistrado Ponente: Jaime Córdoba Triviño, 2008

Corte Constitucional de Colombia, Sentencias C-720 de 1999 Magistrado Ponente Eduardo Cifuentes Muñoz y C-579 de 2001 Magistrado Ponente Eduardo Montealegre Lynett.

Corte Constitucional de Colombia, Sentencias C-004 de 1993, Magistrado Ponente: Ciro Angarita Barón y C-534 de 1996 Magistrado Ponente: Fabio Morón Díaz

Corte Constitucional de Colombia, Sentencia C-1258 de 2001, Magistrado Ponente: Jaime Córdoba Triviño, 2001

Corte Constitucional de Colombia, Sentencia C-189 de 2019., Magistrado Ponente: Alejandro Linares Cantillo, 2019.