

Vulneración del principio de la progresividad y no regresividad con la expedición del acto legislativo 01 de 2005 frente al sistema general de pensiones en Colombia.

Infringement of the principle of progressivity and non-regression with the issuance of Legislative Act 01 of 2005 regarding the general pension system in Colombia.

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RESUMEN

Palabras clave:

Ordenamiento territorial, regalías, pos conflicto, entidades territoriales, acuerdos de paz, esquemas.

Por medio de este artículo se pretende aplicar métodos analíticos puramente a cuestiones legales, es decir, dividirlos en tantas partes como sea posible. Esto significa que, a menos que se persigan otros fines, el objeto debe estar claramente definido (ANÁLISIS DE INEQUIDAD DEL ACTO LEGISLATIVO 01 DE 2005 DONDE SE ELIMINA LA MESADA 14 A NUEVOS PENSIONADOS EN COLOMBIA). La promulgación del acto legislativo N° 01 de 2005, supuso situaciones no propicias a la ley laboral, como la abolición de la mesada 14 para los nuevos pensionados en Colombia. Suprimiendo los derechos que han ganado los trabajadores que creen que tienen expectativas razonables de pensión, y también viola el principio de igualdad constituido en el artículo 13 de la Carta Fundamental, pues actualmente unos pensionados si cuentan con la mesada 14 y otros no. En este sentido, este documento tiene como objetivo analizar la constitucionalidad del acto legislativo No. 01 de 2005 y compararla con las expectativas razonables de las pensiones en el sistema de primas medianas; para lograr la meta propuesta. Además, el principio de sostenibilidad financiera, no ha supuesto efectos inmediatos, pues desde la promulgación del acto legislativo el desbalance del Régimen de Prima Media, persiste.

ABSTRACT

Keywords:

Legislative act; Pension; Inequality; Constitutionality; Financial sustainability; Counter 14.

Through this article it is intended to apply analytical methods purely to legal issues, that is, to divide them into as many parts as possible. This means that, unless other fines are pursued, the object must be clearly defined (ANALYSIS OF INEQUALITY OF LEGISLATIVE ACT 01 OF 2005 WHERE TABLE 14 OF NEW PENSIONERS IN COLOMBIA IS ELIMINATED). The promulgation of legislative act No. 01 of 2005, led to situations not conducive to the labor law, such as the abolition of allowance 14 for new pensioners in Colombia. Suppressing the rights that workers who believe they have reasonable expectations of a pension have won, and it also violates the principle of equality established in article 13 of the Fundamental Charter, since currently some pensioners do have allowance 14 and others do not. In this sense, this document aims to analyze the constitutionality of legislative act No. 01 of 2005 and compare it with reasonable expectations of pensions in the medium premium system; to achieve the proposed goal. In addition, the principle of financial sustainability has not had immediate effects, since since the enactment of the legislative act the imbalance of the Average Premium Regime persists.

1. Introduction

Labour law is a branch of law and consists of a series of legal norms that are established in the relationship between workers and employers. It is made up of the precepts of public and legal order, the prerequisite of these precepts being to ensure that those persons develop fully as individuals and are truly integrated into society.

Although the history of labour law is not as long as that of employment, labour law has existed since people began working to meet their basic needs.

Everyone has the right to a pension in Colombia. This is one of the rights that is not so basic. It is related to the right to work, and it is related to human labour protection.

In the country, this right is precisely the most variable and problematic, because these figures are not decisive in sustaining pensions, because fewer and fewer Colombians have access to them despite great efforts. And even more so when the inequity of the legislative act No. 01 of 2005 eliminated the 14th allowance for new pensioners in Colombia.

In Colombia, based on the choice of the workers (according

to Law N ° 100 of 1993), the pension system is divided into two main applicable systems: the first is the average premium system with defined benefit, which is now administered by Colpensiones. (Congreso de la República de Colombia, 1993, Ley 100) On the other hand, there is a system of individual savings with solidarity, managed by different private pension funds. (Congreso de la República de Colombia, 1994, Ley 115) In accordance with the ideological order of pensions, the legislative act No. 01 of 2005 was enacted. The content of this act proposes situations that are not conducive to labour law, such as the abolition of the 14th allowance for men and women in Colombia. This suppresses the rights that have been won by workers who already believe they have reasonable pension expectations, and also violates the principle of equality constituted in article 13 of the Fundamental Charter, since people who were already pensioners before the publication of legislative act 01 of 2005 and those who caused their pension before 29 July 2005, could still count on the 14th allowance and also granted a transition regime for those pensions that were caused before 31 July 2011, as long as their pension allowance is equal to or less than three SMMLV; people in this case will also receive the 14th allowance, but people who become entitled to a pension after 31 July 2011 will only receive 13 allowances, regardless of the value of the allowance. This generates a notable inequality, as at present some people do have the 14th allowance and others do not. (Congreso de la República de Colombia, 1994, Ley 115)

It also violates Article 58 of our Constitution, which guarantees acquired rights by abolishing the special pension system after 31 July 2010, making these acquired rights unknown and subject to subsequent laws. In accordance with the guidelines, this document resolved its issues related to the violations of constitutional rights and clarified the issue of the law, opposing the rights and legitimate expectations obtained around pensions. In this sense, the aim of this article is to analyse the constitutionality of the legislative act No. 01 of 2005 and compare it with the reasonable expectations of pensions in the medium premium system; in this sense, to achieve the proposed aim.

Colombia has a pension model that is the product of its own historical evolution, pension systems introduced from other countries are welcome, but with the necessary adjustments so that they have clear characteristics.

However, to achieve this, one must first largely succeed in overcoming the individualism inherited from the deep roots of liberalism after the French Revolution, when working class pressure and the Industrial Revolution paved the way for social solidarity, which is why some people even say that unity is the root of social security. The beginning of solidarity is the ratio or basic principle of social security, which is why it is the inspiration that determined its purpose and meaning.

All these very brief descriptions are probably the most relevant details in the development of social security, of course, and the pension system, I am only trying to point out as a social institution or legal institution, the pension model that can find

inspiration, and this in turn is composed of a series of society, politics, ideology, economics and law.

The Colombian pension model for example, in comparison with its Latin American counterparts, all of them were influenced by the reformist wave that took place in the 1990s and realised to maintain a parallel model (some important reforms and adjustments have been made) to the old public system managed basically by the Social Security Institute (ISS) and pension fund (mainly CAJANAL), based on the old system distributed mainly in individual capitals.

Now, by adopting this pension model, the system has recently undergone structural reforms covering the whole area of social security, not only in pensions, two systems have emerged that coexist and are mutually exclusive, but also belong to the so-called contribution-type scheme: solidarity-based average premium plan with defined benefits (public PAYG scheme) and solidarity-based individual savings plan (private capital plan).

All these general descriptions of the pension system in general are ultimately the model for Colombia's pension system and clearly show that the structural reform achieved through the enactment of Law No. 100 of 1993 is a good starting point to define its aims and what are the immediate results and the medium and long term results, which are specified (Congreso de la República de Colombia, 1994, Ley 115)

It should not be forgotten that all these developments, not only historical but also institutional, are evolving. Moreover, there may always be potential concerns, such as the fact that, as more and more workers access the general pension system, the pension scheme is self-sustainable and obviously more viable with unexpected increases in life expectancy.

This includes the legislative act No. 01 of 2005, which approved the following clauses. Article 48 of the Political Charter, adding the principle of financial sustainability to social security. Article 36 of Law No. 100 1993, and the collective agreement between the two parties giving other pension benefits aimed at reducing the imbalance affecting Colombia's taxes. (Congreso de la República de Colombia, 1993, Ley 100)

In the field of social security, pension rights are very sensitive for most people. Especially for those who have an employment relationship. In the same way, Now, this article aims to warn people about a very interesting legal issue, and from a totally innovative point of view, because the provision of transitional paragraph 4 and the eighth paragraph transitional paragraph no. 6 of the legislative act no. 01 of 2005 are not applicable, as it has already been pointed out, the fundamental principle of financial sustainability of the pension system is sustained, which is applied to two other principles of the same rank, that is to say, that of equality and the progressivity and non-regressivity of the second generation rights, also of constitutional rank. One of these principles must prevail without completely disregarding the others. Since the promulgation of the "Political Constitution" has opened a new era in the Colombian state, of a country of

law, which can say that the most important foundation is the respect for human dignity. (Asamblea Nacional Constituyente, Constitución Política de 1991)

Trying to understand if the previous reforms have been implemented and if they are protecting the previous financial sustainability and the imbalance of pensions that the country suffers, deciding if they adopt the mechanisms to maintain the balance between the rights of Colombians and the state.

The following legal problem arises from the above: It is therefore considered pertinent to determine how legislative act 01 of 2005, by which pensions are reduced from 14 allocations to 13 per year, violates the principle of progressivity and non-regressivity?

Therefore, we will develop an analysis that will help us to clarify the basic concepts for the subsequent understanding of the elimination of the 14th allowance for new pensioners in Colombia.

Likewise, this research will be forged based on descriptive legal documentation where laws, decrees, resolutions, circulars, on the concept of constitutional normative power is generally accepted in doctrine and national jurisprudence, it is a concept of multiple contents, which have not been adequately defined in demonstrative use, and its various forms require rationalisation and explicit self-assessment. This is where you can go as a source or reference at any time or in any place without changing its nature or meaning to provide information or illustrate the reality of the inequity analysis of Legislative Act No. 01 of 2005 eliminating the 14th allocation to new pensioners in Colombia. (Congreso de la República de Colombia, Acto Legislativo No. 01 de 2005)

This research method aims to find contradictions, flaws, omissions between legal norms or legal systems, a judge's jurisprudence is based on the solution of the concrete case, in theory, it is understood as technical and theoretical research by experts in the field of law. Although this is true, descriptive legal research deals with legal norms or legal systems as a specific aim and cannot be eliminated or isolated from reality. The legal or economic, political and historical world of the society and the country will, as a condition, be treated critically and reflectively.

Reflection Historical context of pension payments in Colombia

Pension allowances.

The pension allowance refers to the payment that is received regularly, when the pension to which he/she is entitled for having contributed to the system, for having reached the age, the number of weeks or the savings requirements (as the case may be) is reached. A pensioner receives a regular allowance for services previously rendered.

December allowance.

According to Law No. 100 of 1993, it modified the maximum limit of pension allowances to determine the proportional

relationship between the amount and the basic income, to settle various benefits and to determine various pensions in the form of various percentages. (Congreso de la República de Colombia, 1993, Ley 100)

As for the additional December bonus, in no case should it be less than the statutory minimum monthly salary, because although Article 50 of Law No. 100 of 1993 does not provide for it, it can be inferred that this is because the pension bonus cannot be less than the amount mentioned above; there is no upper limit for the maximum amount of the December allowance, but it has been indicated that the amount is equal to that of the ordinary allowance, and is set at the equivalent amount based on the average amount specified in Law No. 100.

For this reason, in order to determine the December allowance, it is necessary to refer to the ordinary pension allowance, which does have minimum and maximum amounts; typified in this way: For the disability pension, it has the same minimum amount as the previous one, and as the highest limit it establishes 75% of the base settlement income. (Congreso de la República de Colombia, 1993, Ley 100)

In the situation of survivors' pension, the monthly amount of the pension is 100% of the allowance enjoyed by the deceased pensioner. A minimum amount equivalent to the current minimum monthly wage has been imposed. While the higher limit is 85 or 75% of the base settlement income, it is dependent on the retirement, old age or disability pension respectively. Notes from the report authorised for publication and issued on 11 November 1998. (Congreso de la República de Colombia, 1993, Ley 100)

June allowance.

On the other hand, Law 100 in art. 142 adds another allowance, called allowance No. 14, which will be recognised to pensioners for retirement, disability, old age and survivors, and which will have an assigned amount of 30 days of the pension that corresponds to them. This will be paid in the month of June every year. Article 43, paragraph 1, of Decree No. 692 of 1994 mentions that the ceiling for the payment of this pension allowance cannot exceed 15 SMMLV. (Corte Constitucional de Colombia, 1993, Sentencia C411, párr. 40)

Principles infringed by the 2005 legislative act

Legislative Act No. 01 of 2005 is a regulation issued by the Congress of the Republic, a prerequisite in the area of Colombian social security law, because it was established as the final turning point in the realisation of a unified general pension system, which, among other factors, prohibited agreements to agree on pension benefits and requirements that are contrary to those stipulated in the laws of the general pension system, eliminated the 14th allowance, limited the pension transition regime created by art. 36 of Law No. 100 of 1993 and restricted special pensions. This has raised a number of questions about its constitutionalisation and applicability. It is therefore necessary that it be made the subject of analysis. The Constitutional Court and the Labour Cassation Chamber of the Supreme Court of

Justice made these issues the focus of analysis. (Lopez, Morad, & Gonzalez, 2019).

Principle of progressivity and non-regressivity

The principle of progressivity and the prohibition of regression is the essential element of the guarantee of economic, social and cultural rights, including social security rights. The mandate of progressivity also implies that any regression in relation to the level of protection that has been achieved must be presumed to be unconstitutional and must be subject to strict and thorough judicial control and the authorities must enter to demonstrate that there are urgent and compelling reasons that demonstrate the necessity of such a regressive step for a sustainable development of the social benefit right and that such a regressive step may be constitutional. The purpose of the principle of progressivity and non-regression based on pension rights is to enable them to be realised in an advanced, evolutionary and non-regressive manner. However, with the enactment of Legislative Act No. 01 in 2005, article 48 of the Political Constitution was amended. Based on the reasonable expectations of people who want to receive their pensions, it is clear that this principle is being flagrantly violated. (Ceballos, 2016)

The principle of progressivity is established in the international legal regime, such as in the International Declaration of Human Rights, and the “International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the latter, approved unanimously by the United Nations General Assembly on 16 December 1966 in New York. And in Colombia, through Law No. 74 of 1968, these international covenants were subsequently approved. Then, through Law No. 319 of 1996, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” of 1988 was approved. With the “Convention of the United States on Human Rights” and the “Protocol of San Salvador” the enforceability of legislative acts, once these are approved by Colombia, and the principle of progressivity based on pension rights, its aim is to make them a reality in an advanced form. However, in Colombia, the pension consists of two systems, the first being a defined subsidised average premium and the second a personal solidarity savings scheme, which are not in line with each other. It is true that both pension systems remain rooted to principles and rights in the Constitution, in which we highlight the principle of progress, easier to find in art. 48 of the Fundamental Charter.

Although, in principle it is often said that there is no right to social security, based on the basic denomination, there is a connection with basic concepts such as a dignified life, minimum vitality, equality, etc. Therefore, through the tutela mechanism, it is possible to continue the special and temporary character of the confirmation and payment of the pension. (Asamblea Nacional Constituyente, Constitución Política de 1991, Art. 86)

With the enactment of the legislative act No. 01 of 2005, social security has been largely suppressed in social problems related to pensions, such as transitional systems, additional

allowances or bonuses such as 14, bargaining power and special regime, ignore the international instruments mentioned above, and propose the principle of gradualism, because with this behaviour, it is necessary to take return measures that affect the entire population. (Ceballos, 2016)

Now, as Buitrago Guzmán concluded in his paper “El nuevo derecho a la estabilidad social en Colombia acto legislativo N ° 01 de 2005: contradicciones dentro del bloque de constitucionalidad”, all the different transformations to social security celebrated by the Congress of the Republic of Colombia using the mentioned legislative act, have caused real contradictions of unconstitutionality, since the principle of financial sustainability incorporated into the constitutional text, undermines the very purpose of the constitutional principles of equality and progressiveness. (Ceballos, 2016)

The principle of progressivity has been applied in many related judgments by the constitutional court. As mentioned above, progressivity is reflected in two international instruments, the ICESCR and the 1988 Protocol of San Salvador, therefore, Colombia should not ignore that social security is an inherent right of societies, and should have kept this in mind when enacting Legislative Act No. 01 of 2005. (Ceballos, 2016)

The Constitutional Court stated that the principle of progressivity emanates from the deprivation of retrogression because the state has the obligation to gradually increase and fulfil social rights on the basis of the progress made. In this sense, the violations of this fundamental guarantee are largely due to the decrease of public resources invested in social rights or to the substantial increase of costs for low-income people who are acquiring their rights to social stability, all these initiatives by government policies and the congress of the republic are undermining the constitutional guarantees in social security. (Corte Constitucional de Colombia, 1993, Sentencia C411, párr. 40)

On the other hand, Legislative Act No. 01 of 2005 violated the Constitution, as this act did not seek to reform a constitutional text, but rather to substitute such texts, on the understanding that reform is only a partial modification of the Constitution, which does not change the principles and fundamental structure of the Constitution, which form the essential purposes of its existence. On the other hand, substitution adds premises that are not in accordance with the principles, international treaties, and axes that define the Political Charter, which is what actually happened in this case with the promulgation and entry into force of the legislative act in question. By transgressing the principle of progressivity and non-regressivity, reducing the pensions of new pensioners in Colombia from 14 allocations to 13 per year. Thus demonstrating that the law replaces fundamental precepts of the Political Charter, such as the principle of progressiveness, without forgetting the principle of equality of social rights, and that it is in accordance with the principles of solidarity, efficiency and universality, replacing the structure of the Fundamental Charter and ceasing to be a simple reform.

Finally, as Calvo Chaves concluded in his research “applying

the principle of progressivity in Colombian constitutional jurisprudence”, gradualism as a principle refers to the confirmation of interests. In relation to all social rights, higher and higher, in the economy and in culture (Calvo, 2011)

Denial of the primary constituent to the social security reform in the referendum called by Law 796 of 2003 .

The Congress of the Republic of Colombia as a constituent derived from Legislative Act 1 of 2005, overstepped all constitutional boundaries, having enacted this act, since they did not take into account the popular decision of the primary constituent, which expressed its rejection of any amendment to the constitutional text that had to do with the general pension system and social security, Although this popular decision was taken two years ago, the legislators still decided to enact the legislative act and give way to its entry into force, completely disregarding citizen participation and the decision on the issue of social security. In other words, article 48 of the Constitution, the fundamental text of social security, was arbitrarily modified, which had been enshrined in the original 1991 Charter by the primary constituent. Thus, the popular decision to maintain the June bonus was not respected by the Colombian state.

It is worth mentioning that there is a “substitution test”, which has been a methodology provided by the Constitutional Court and which consists of the formulation of certain criteria which are necessary to determine whether Congress acted within the limits of its functions, these criteria are defined as: “EDICS” or “defining elements of constitutional identity”. Thus, if Congress has eliminated or essentially modified any of these elements, it would be understood that Congress has not reformed the Constitution, but rather, that it has changed it for another, and for this reason the legislative act should be considered unconstitutional and therefore worthless. Notes on the constitutional prohibition of conventional pensions.

Finally, we can mention that Legislative Act No. 01 of 2005, was declared constitutional by the Constitutional Court, through sentence C-277 of 2007, where it argues that there was no procedural flaw.

Conclusions

In Colombia there is a clear pension inequity and financial sustainability as a principle incorporated into article 48 of the political constitution, by means of legislative act 01 of 2005, has not had immediate effects, because since the enactment of that legislative act the fiscal deficit of the Colombian state and the imbalance of the Average Premium system still exists and is growing as time goes by. Bearing in mind that the pension system in Colombia is dual, a private system and a public system, it is clear that the primary aim of financial sustainability is to guarantee the right to a pension for workers within a social state, and this must be sustainable and indefinite over time. However, this pension system becomes “unsustainable in the medium and long term” as stated by the Private Competitiveness Council, given that by 2020, according to the CPC, “the Government granted close to 4% of GDP, that is, some \$42.7 trillion pesos, even though only one in four people of retirement age received

a contributory pension. According to the organisation, there will be about 14.2 million elderly people in 2055, and 8.3 million of them will not have any social security benefits in their old age”. (Ceballos, 2016)

With these figures we can see the profound imbalance that exists in the Colombian pension system and the problems of coverage and unsustainability that persist. The problem of coverage is the greatest risk for the Average Premium System with Determined Benefit, as it shows a low rate of people contributing to their pensions, which generates gigantic fiscal instability. Given that there is an enormous gap between the assets that are captured by the notion of contributions of the affiliated workers and the value of the liabilities that must be paid to the people who are already pensioned, for this reason it is necessary to subsidise this surplus with the resources of the public expenditure of the state. Now, understanding that in Colombia there are two competing pension systems, which is an anomaly of the pension system, one public and the other private, the solution would be to strengthen the public system (Colpensiones), which is a public fund of simple distribution the contributions of active workers are destined to finance the existing pensions at the time. According to Colpensiones, the entity has 1,416,000 people receiving pension benefits and although at the cut-off date of 30 July 2020, there were more than 6,830,000 affiliated workers; of these affiliates, 37% were active for the month in question, and approximately 80% were contributing for a minimum wage (SMMLV), these figures are still low in terms of the coverage necessary for the simple pay-as-you-go system to be viable and sustainable in the long term. (Colpensiones , 2022)

For this reason, the state is obliged to allocate resources from the state’s public expenditure in order to be able to respond with the payments to the pensions of the Average Premium System that is administered by Colpensiones, as can be seen in 2021, of the \$313.9 billion budget that the national government has estimated, (\$42.4 billion) will be allocated for the payment of pensions, which would mean an expenditure of 13% of the budget for 2021 on pensions. This means a quite important public expenditure and shows that the pension system in Colombia cannot be self-supporting, it is not financially viable, because it is understood that a pension system is financially viable when with the contributions received from the members and the resources allocated by the state it is possible to pay the current pension payments and also to generate savings or reserves for the purpose of paying future payments and the pensions that have been caused. This characteristic is not typical of the average premium scheme, since the state must allocate a considerable amount from the public budget to pay the current pension payments and the pensions that have been accrued, but without generating any type of reserve to pay future pension payments. For this reason, it is necessary to carry out a pension reform in Colombia that seeks to strengthen the public pension system in order to expand coverage and thus have the necessary resources to pay current and accrued pension payments, as well as to generate reserves for future pensions. The aim of this pension reform is to ensure that it is not regressive, as all pension reforms carried out in the last 20 years have been, and in which the rights of pensioners and

workers who are contributing to receive such benefits have been harmed, thus violating the principle of progressiveness, which is the fundamental basis of social security in Colombia and of the Political Constitution. Given that in Colombia the majority of workers are in the informal sector and earn less than four minimum monthly wages, the pension reform must ensure that workers who earn less than 4 minimum wages must contribute to the average premium scheme, managed by Colpensiones, with the aim of extending coverage and making the simple pay-as-you-go system financially viable and sustainable. On the other hand, those who earn more than 4 SMMLV will have the possibility of choosing whether to contribute to the public pension system or to the RAIS, managed by the private pension funds. This proposal maintains the private pension system and strengthens the public system, which generates a fiscal deficit in the state by having to respond with public resources for the pensions of the average premium system. (Colpensiones, 2022)

On the other hand, with the enactment of Legislative Act No. 01 of 2005, conventions and treaties of international organisations were not recognised, leaving aside the constitutional block, where the principle of progressiveness is embodied as one of the pillars of society and human dignity. On the other hand, the State is obliged to increase the satisfaction of social rights and is prevented from going backwards in the advances achieved, however, with the enactment of legislative act 01 of 2005 regressive measures were taken that are affecting the new pensioners in Colombia, by eliminating the 14th allowance, which was a benefit right achieved in favour of all workers and pensioners who during the history of labour law and social security in the country, have been the most vulnerable and that with the issuing of this act the legitimate expectations that they had were undermined. (Congreso de la República de Colombia, Acto Legislativo No. 01 de 2005)

Colombia has had an enormous regressive effect on the social security system, given that, with the regulatory changes of recent years, the pension rights of workers affiliated to the General Pension System have been eliminated, and pension guarantees that improved the quality of life of pensioners and their families, providing economic stability and protection of human dignity, have been removed. Given that, with the issuance of Legislative Act No. 01 of 2005, the principle of progressivity was flagrantly violated since the principle of financial sustainability was added to Article 48 of the Political Constitution, which in the long run prevails over the principles of progressivity and equality, and with this a contradiction was created within the Constitutional Block, which despite the many pronouncements of the Constitutional Court and its precedents, this violation is still in force.

Furthermore, with the creation of Legislative Act 01 of 2005 we can observe the violation of the fundamental principles of the Political Charter and the essential aims of the State, such as the general prosperity of its citizens, the effectiveness of the principles that protect the rights to a dignified old age and a well-paid rest, It is a total contradiction to weigh fundamental human rights against the political and economic rights of our state, since the essential aim of the legislative act has been

primarily to protect the state's financial system, which, even with the addition of the principle of financial sustainability to art. 48 of the Fundamental Charter with the argument that the state's public resources should be safeguarded, even so, at this moment it is presenting a fiscal deficit that is too high, however, the members who have legitimate expectations of obtaining their pension rights should not tolerate that always in situations where pension reform is being sought, They should also not tolerate that the principles of equality and progressivity are continuously violated in the reforms carried out through Congress, issuing regressive norms that are contrary to the very purpose of the Constitution. (Ceballos, 2016)

Finally, as we can see, the principle of financial sustainability that was added to art. 48 of the Magna Carta, did not generate the expected results in the medium and long term, because today, the fiscal deficit is enormous, making it necessary to use public resources of the state to pay the pension allocations of all the pensioners of the medium premium regime administered by Colpensiones. However, in one way or another, it has been possible to maintain the medium-premium pension system, thus demonstrating that it has sufficient funds for the time being to respond to the payments to its pensioners. It is therefore evident that the problem of the public pension system is due more to the low number of contributors and the few opportunities for formal employment in the country, than to the wastefulness of the public pension system in granting the 14th allowance to its pensioners. If more formal jobs were offered, a greater number of contributors could be generated, and therefore the simple pay-as-you-go system managed by Colpensiones would be more viable, and reserves could be obtained for pensions that are being caused and future pensions; and it would not be necessary to constantly make regressive reforms to the pension system in Colombia, which would generate a violation of the rights already acquired by the workers, and rights that had been obtained and then were eliminated, such as the 14th allowance, could be re-established. As we can see, its elimination did not help to reduce the fiscal deficit, but rather the deficit is maintained and grows over the years, thus demonstrating that the decision to eliminate allocation 14 was in vain, did not have the expected effects and constituted a violation of the fundamental rights of workers and pensioners in Colombia.

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