

**SOME POSSIBLE LEGAL APPROACHES ABOUT ‘EFFICACY’ AS RE-  
SEARCH CATEGORY OF ALTERNATIVE METHODS FOR CONFLICT  
SOLUTION (AMCS)<sup>1\*</sup>**

Martha Eugenia Lezcano Miranda<sup>2\*\*</sup>

Jorge Eduardo Vásquez-Santamaría<sup>3\*\*\*</sup>

Recibido: Octubre 1 de 2018

Aprobado: Noviembre 8 de 2018

**ABSTRACT**

By questioning the applicability of Alternative Methods for Conflict Solution (AMCS) in public contracts of working, consulting and concession in the Metropolitan Area of Valle de Aburrá in the light of Law 80 of 1993, it was showed the absence of previous methodological construction on efficacy as analytical category of juridical setting and sociojuridical objects. So it is valid to ask which juridical approaches allow the category ‘efficacy’ to intermediate the object of some juridical research? This work is centered

---

<sup>1\*</sup> First published in the book *Sujetos de especial protección constitucional y otras reflexiones jurídicas: avances de investigación jurídica y sociojurídica*, Fundación Universitaria Autónoma de las Américas, Medellín, Colombia, 2018. The reflection is based on the conclusions of the research project “Eficacia de los Métodos Alternativos para la Solución de Conflictos en contratos de obra, consultoría y concesión en el Área Metropolitana del Valle de Aburrá a partir de la ley 80 de 1993”, ascribed to the research team *Orbis Iuris*, working on “Law, Conflict and Internationalization”, Law Faculty, Fundación Universitaria Autónoma de las Américas, Medellín, Colombia.

<sup>2\*\*</sup> Lawyer, Specialist on Criminal Law and Criminology from Universidad de Medellín, Specialist in Drug Dependence from Universidad Católica Luis Amigó, Undergraduate Director of Law, Fundación Universitaria Autónoma de las Américas. Teacher and researcher of *Orbis Iuris*, ascribed to Fundación Universitaria Autónoma de las Américas. E-mail: martha.lezcano@uam.edu.co

<sup>3\*\*\*</sup> Lawyer, Mag. in Law from Universidad de Medellín. Specialist in Academic Research Teaching from Universidad Católica Luis Amigó, and Administrative Law from Universidad Pontificia Bolivariana. Teacher and researcher, head of *Orbis Iuris*, Fundación Universitaria Autónoma de las Américas. E-mail: jorge.vasquez@uam.edu.co

in showing some possible implications of efficacy as category for juridical research, by a theoretical foundation of its methodological development, from contributions of Law General Theory and statements about efficacy as general principle in the practice of administrative function and public deals. From two proposed dimensions, in the conclusions is stated that efficacy is a category that allows a particular research approach, resulting both in a definite searching criterion and in the validation of juridical and sociojuridical objects, such as conflict resolution in public contracts.

**Keywords:** Efficacy, Principle, Public Contracts, Administrative function.

## ALGUNOS ENFOQUES JURÍDICOS POSIBLES SOBRE LA EFICACIA COMO CATEGORÍA PARA LA INVESTIGACIÓN DE LOS MÉTODOS ALTERNATIVOS DE SOLUCIÓN DE CONFLICTOS (MASC)

### RESUMEN

A partir de la pregunta ¿qué aplicabilidad tienen los Métodos Alternativos de Solución de Conflictos (MASC) en los contratos estatales de obra, consultoría y concesión en el Área Metropolitana del Valle de Aburrá, a partir de la ley 80 de 1993? se identificó la ausencia de una construcción metodológica previa sobre la eficacia como categoría de análisis de las disposiciones jurídicas y los objetos sociojurídicos. De lo anterior deriva un interrogante accesorio del que depende la aprehensión del citado problema y sobre el que se concentra este escrito ¿Qué enfoques jurídicos posibilita la eficacia como categoría que mediatiza la investigación de un objeto de estudio jurídico?. Este trabajo se concentra, por medio de una construcción teórica de base para el desarrollo metodológico de la investigación, en develar algunos alcances posibles sobre la eficacia como categoría para la investigación en Derecho. Para ello, acude a contribuciones de la Teoría General del Derecho y a contenidos de la eficacia como principio general para el ejercicio de la función administrativa y de la contratación estatal. Desde las dos dimensiones propuestas en las conclusiones se traza la eficacia como una categoría que permite un enfoque investigativo concreto, del que se desprenden un parámetro de indagación y la valoración de objetos jurídicos y sociojurídicos, como es el caso de la resolución de conflictos en un escenario de la vida social como la contratación estatal.

**Palabras clave:** eficacia, principio, contratación estatal, función administrativa.

## ALGUMAS ABORDAGENS JURÍDICAS POSSÍVEIS SOBRE A EFICÁCIA COMO CATEGORIA PARA A INVESTIGAÇÃO DOS MÉTODOS ALTERNATIVOS DE SOLUÇÃO DE CONFLITOS (MASC)

### RESUMO

A partir da questão: qual é a aplicabilidade dos Métodos Alternativos de Solução de Conflitos (MASC) nos contratos estaduais de obras, consultoria e concessão na Região Metropolitana do Valle de Aburrá, a partir da Lei 80 de 1993? Verificou-se a ausência de uma construção metodológica prévia sobre a eficácia como categoria de análise das disposições jurídicas e dos objetos sociojurídicos. Do exposto deriva uma questão acessória que depende da apreensão do problema mencionado e sobre a qual este trabalho se concentra: Quais abordagens jurídicas possibilita a eficácia como categoria que media a investigação de um objeto de estudo jurídico? Este trabalho concentra-se, por meio de uma construção teórica de base para o desenvolvimento metodológico da investigação, em revelar alguns escopos possíveis sobre a eficácia como categoria para a investigação em Direito. Para tanto, busca contribuições da Teoria Geral do Direito e dos conteúdos da eficácia como princípio geral para o exercício da função administrativa e de contratação do Estado. Desde as duas dimensões propostas nas conclusões, a eficácia é traçada como uma categoria que permite uma abordagem investigativa específica, a partir da qual emerge um parâmetro de indagação e a valorização de objetos jurídicos e sociojurídicos, como a resolução de conflitos em um cenário da vida social como a contratação do Estado.

**Palavras-chave:** eficácia, princípio, contratação estatal, função pública.

### 1. INTRODUCTION

From the Political Constitution of 1991 is clear that, by tradition and preference, the function of justice administration is ascribed to the public judicial power, in the hands of Constitutional Court, Supreme Justice Court, State Council, Superior Council, General Attorney, courts, judges, Military Penal Court and, exceptionally, the Congress (Constitución Política, 1991, articles 174 y 175). On consequence, justice administration is an essential public function because, being a public activity, continuous and uninterrupted, it is the base of democratic states, by guaranteeing that someone, invested by law and acting with the force of state, objectively responsibly, independently, autonomously, rapidly, efficiently and efficaciously settles those conflicts arising between parts (Constitutional Court, 1997).

From article 116 of the Constitution it follows that, exceptionally, admi-

nistrative authorities may be legally invested with the function of administering justice in matters specifically prescribed by law, insofar as this habilitation does not imply criminal prosecution. Similarly, it authorizes and gives constitutional validity to the Alternative Methods for Conflict Solution (AMCS), as is stated by subparagraph 4:

Individuals may be temporarily invested with the function of administering justice acting either as jurors in criminal cases, as conciliators or as arbitrators empowered by the involved parties to rule in accordance to law or equity, under the terms established by law.

Exceptionally, 1991 Constitution expanded the organic and functional field of administering justice from the State to other agents by authorizing individuals to solve disputes by means of persons who, temporarily invested with the function of administering justice, act as conciliators or as arbitrators empowered by the involved parties to rule in accordance with law or equity, under the terms established by that very law (Constitutional Court, 1997).

As stated by jurisprudence, the function of administering justice by individuals is essentially occasional and temporal and also voluntary and unsolicited, because in accordance with Constitution, the parties empower some individual to solve their dispute. The temporal and alternative character of these instruments derives from the fact that they constitute a form of individual cooperation to the success of justice administering. This cooperation is defined as a constitutional civic duty (Constitución Política, 1991, articles 95-7). Hence, because of public order reasons, it is not possible to translate permanently the function of justice administering to individuals.

With constitutional support in their administering of justice, the AMCS are specially relevant in state contracting, a very difficult team marked by non-compliance and extension or suspension of contracts, due to corruption, violation, vulneration and unawareness of contractual principles and rules, or even natural phenomena and calamities causing a breach in State obligations. Some instances of these practices, common in Colombian state contracting, are shown by Fredy Céspedes (2012):

Improper contract naming, naming a concession “lease”, tailored solicitation documents, modifying document terms just a couple of hours before the end of bidding process, field visits one hour before expected, adjudication at lowest cost (adjusting it upon request), several companies conform criminal organizations manipulating economic formulae to win the tender, supplantation of contractors (awarding the contract to some provider considering its quality, but this yield it to a third party without the supposed qualities), supposed exclusivity (direct contracting, disregarding other providers), use of façade inter-administrative or science and technology contracts as well as contribution to organizations to cover direct contrac-

ting, using contracts to sue the State, unlimited additions by unitary prices figuring, failure in quantity or quality specifications (s.p.).

More specifically, several issues of Colombian state contracting were identified and described in a research named "Initial components for formulation and design of public planning policies in contractual process of Government of the Province of Antioquia"<sup>4</sup> (Vásquez-Santamaría, 2018). The more recurrent difficulty lies in the content, extent, and binding power of planning. About this principle much is debated, from its apparent lack of bidding power, given the lack of positive recognition. This position is highly questionable from 1991 Constitutions' perspective, where principles are recognized as optimization mandates, with normative force, not requiring positivation. Its extent and axiological contents are also debated, as well as its delimitation and articulation with other contractual and administrative processes, considering even whether its non-compliance nullifies state contracts.

Additionally, research showed other potentially public problems (Vásquez-Santamaría, 2018), for instance, that worked on by Yuri Gorbaneff (2003), who identifies the neglect of law 80 of 1993 to the economic theory of its proponents, joining to it the incompleteness of state contracts and their necessary renegotiation; Mónica Safar (2016), who proposes tender restriction as a mechanism only applying to the contracting of uniform and common goods and services; and Fabián Marín Cortés (2015), who identifies in law 80 of 1993 normative exclusion of many state entities and their subjection to normative provisions outside Contracting Statute.

These problems must be overcome by the ends of state contracting, provided in article 3, law 80 of 1993:

Public officials must consider that, at the moment of contracting and during their execution, entities try to fulfill state endings, the continuous and efficient provision of public services and the effectiveness of the rights and interest of those administered, aiding them in the attainment of the aforesaid endings.

Even though these endings are reinforced by the public entities' rights and duties to contract, recognized by law (law 80, 1993, article 4). Conflicts arising from the aforesaid activity affect Nation's most sensible interests and public funds.

---

<sup>4</sup> The research "Initial components for formulation and design of public planning policies in contractual process of Government of the Province of Antioquia" was ascribed to the line of research "Law, Conflict and Internationalization" of the research group *Orbis Iuris*, Law Faculty, Fundación Universitaria Autónoma de las Américas, Medellín, Colombia, 2015-2017.

Since state contracting is full of debate, looking for justice in conflicts appearing in contracting law 640 of 2001 defined conciliation as procedural requirement, as stated in article 35:

In matters subject to conciliation, legal extrajudicial conciliation is a procedural requirement in order to turn to civil, contentious-administrative, labor, and family jurisdictions, in accordance with relevant legal provisions.<sup>5</sup>

Later, this norm was modified by article 13 of law 1295 of 2009, that approved judicial and extrajudicial conciliation in matters contentious-administrative as a new provision of law 270 of 1996:

When issues are subject to conciliation, the advancement of extrajudicial conciliation always constitutes a procedural requirement of actions provided in articles 86, 86 and 87 of Contentious-administrative Code, or the norms replacing it.

Article 42A, a new provision of law 270 of 1996, referred to prejudicial conciliation in invalidity action and right restoration, direct compensation action and contractual actions. Actually, law 1437 of 2011, article 161, states as requirement for suing in contentious-administrative courts that:

When issues are subject to conciliation, the process of extrajudicial conciliation constitutes procedural requirement in every lawsuit related to invalidity with right restoration, direct reparation and contractual disputes.

Specifically, law 80 of 1993, article 73, stated: "It could be arranged to go to conciliation and institutional arbitration centers of professional associations and chambers of commerce, in order to solve contractual disputes". Thus, it sets an outline different to that disposed by law 23 of 1991, regarding conciliation's place, because it used to be settled in the contentious-administrative jurisdiction. In law 80 of 1993, conciliation was settled in conciliation centers recognized by law. In law 23, conciliation requires judicial homologation, parameters not demanded by law 80, therefore law 23 added a procedure do not referred to in law 80.

Decree 1818 of 1998 collected current legislation referred to ASMC and, consequently, that pertaining contentious-administrative matters. Nonetheless, by Ruling C-893 Constitutional Court invalidated articles 12, 30 and 39 of law 649 of 2001, specifically those parts related to conciliation center, because it violated legal reserve. In other words, even though law 640 of 2001, article 23, enabled conciliation in administrative matters before Public Ministry Agents, delegated to contentious tribunal, and before conciliation centers, Ruling C-893 of 2001 invalidated conciliation centers. For this reason, in administrative law there can only be a prejudicial conciliation

---

<sup>5</sup> Constitutional Court, by Ruling C-893 of 2001, declared laboral expression invalid, remaining as procedural requirement in matters subject to conciliation only in civil, family, and contentious-administrative jurisdiction.

hearing before Agents of Public Ministry, delegated to Contentious-administrative Tribunal. This rule was ratified by Constitutional Court (2002):

(...) the choice of Public Ministry Agents for such purpose is precisely justified to protect legality and administration's patrimonial interests, as explained by Ruling C-1195 of 2001, principle 7.4, when stated: "administrative conciliation can be carried on only before Public Ministry agents assigned to contentious-administrative jurisdiction".

To this clarified overview offered by constitutional jurisprudence in conciliation matters, there can be added the strengths of arbitration as other possible ASMC to resolve conflicts arising from state contracting. State Council explained that (2006, expedient 32514):

(...) this mechanism of justice administration in which arbiters act empowered by law and enabled by conflicting parties is constrained by certain material and temporal limitations: the first, because only can be submitted to arbiters' authority those disputes dealing with matters that may be free disposed, that is, related to rights and patrimonial goods over that can be legally disposed by their owners; contrario sensu, matters that can not be free disposed, as those related to marital status or public security. Regarding temporal limits, it is shown that arbitration tribunals should last as arranged by parties or stipulated by law, and should end its functions after the expedition of the corresponding arbitration award.

Hence, parties contracting with the State may agree to submit to arbitration tribunal's authority those differences arose from a conflict susceptible of transaction, thereby weaving their right to a hearing by ordinary justice. Once settled by parties, possible conflicts arising from arbitral agreement must be settled by arbiters, without possible intervention of ordinary justice. That does not mean that before ordinary justice arbitral awards are invalid. With Decree 2279 of 1989 conscious, technical or in accordance with law arbitration appeared in Colombian legislation. Of them, technical arbitration had the greatest impact in administrative contracting. Nonetheless, law 1563 of 2012, article 1, provided that:

When a public entity or another performing their duties are involved in a tribunal, if disputes emerged from or on account of celebration, development, execution, interpretation, ending or settlement of state contracts, including economic consequences of administrative acts issued in the exercise of exceptional functions, awards must be issued in accordance with law.

Hence, technical arbitration is ruled out from issues deriving from contracts involving the State, inasmuch as arbitration must be settled in accordance to law, as a general rule.

Similarly, there exists amiable composition, legally based, by which parties delegate in a third, denominated amiable compositeur, the solution

of a conflict involving the degree fulfillment of a transaction liable to transaction, and the way the fulfillment. By amiable composition, to settle disputes parties rely on one or more amiable compositours, that can be singular or plural, but always in uneven number, designated by the parties or by a third delegated to that designation. In that respect, Constitutional Court stated in Ruling T-017 of 2005 that:

Given the essential character of some services provided by the State, not being liable of cessation in their fulfillment and execution, differences between parties liable of transaction may be settled out of court. This endeavors to the continuous, regular and efficient provision of public services, and also to the fulfillment of parties' rights and duties. Look at how article 69, law 80 of 1993, in order to fulfill this mechanism, prohibit any obstacle in the use of direct solution mechanisms to solve contractual disputes and, additionally, paragraph of article 68 enables state entities to revoke at any time their own contractual administrative acts, provided that there are not enforceable judgment upon them. This way are negotiations and agreements are facilitated, allowing the solution of conflict arising between parties in state contracting, without requiring judicial processes that, by the entailed delay, not only affect the quality of provision of public services but also, eventually, may be detrimental to State Treasury.

Acknowledging direct settlement principle in state contracting, where is related by jurisprudence (Corte Constitucional, 2005) with those principles protecting economy and contractors' economic patrimony, thus adopting AMCS, enables a correct and prudent administration of public funds and avoids the risk of procedimental solutions, considering their delays and wearing. Constitutional and legal possibilities to settle disputes arising from state contracting, trough some AMCS, avoid direct jurisdictional lawsuits and enable the proper fulfillment of public function, proper administration of public funds and the fulfillment of State's endings.

Nonetheless, even though AMCS positivization in domestic legal order guarantees legal security by the validity of the provisions regulating it, the actual fulfillment of its ending or its teleological aspect, does not necessarily mean a real efficient use in the settlement of state contracting disputes. This is suggested by the proliferation of contractual disputes in Colombia, public fraud and failure in public services provision.

Hence, it is clear that the fulfillment of State's endings, through the contracting capacity of public entities, is degenerating by the action of many problematic instances. To these, efficacy in judgments and AMCS do not seem a proper solution. Thus arises the research question "what's the applicability of AMCS in state contracting on working, consultation and concession in Metropolitan Area of Valle de Aburrá, considering law 80 of 1993"?



Nonetheless, considering the profound consequences that the aforesaid socio juridical problem had in Colombia in recent years, it is necessary to investigate with the greatest responsibility AMCS's effectiveness threshold, facing those controversies arising from state contracting of construction, consulting and concession in whatsoever jurisdiction.

Being an academic and investigative responsibility, it is believed that methodological design is the component upon which rigurocity and objectivity must be settled as dimensions of efficacy as the adequate category to contracting dispute solving. Enough clarity should guide interaction between cognisant subject and object studied, consolidating, at the same time, methodological principles to assess the actual application of AMCS in a given dispute.

Hence, in this research appeared the question "which legal approaches allows efficacy as category mediating the research of some legal phenomenon? This, of course, is a subsidiary matter, depending on apprehension of the aforesaid problem (the primal object of this paper), through whom we ascend toward efficacy as decisive category in order to understand AMCS's real potential in solving state contracting disputes.

Dogmatic preliminary inquiry of efficacy as category enabling apprehension of some juridical or socio juridical subject is needed when "efficacy and applicability may be considered as parts of current legal order. Nonetheless, legal experts almost never explain these basic presumptions" (Navarro y Moreso, 1996, p. 120). As is explained by García (2005, p. 2) "of course, it is of vital importance in law studies, due in part to its sunlike projection upon every conceivable subject of the legal universe".

Choosing efficacy as subject of studied, combined with state contracting dispute solving through AMCS in Colombia, this paper amplifies it contents by defining its scopes. With this efficacy is not presented as a category wide enough to be considered an undefined legal concept, on the contrary, its fullness is used to delimitate its own potentialities, transforming its different scopes and dimensions in sort of functional paths useful to socio juridical research.

Hence, at the beginning, efficacy is considered a part of Law General Theory that contributes to the development of legal science and thereby to the comprehension of its impact on legal devices' developing and applying in specific problematic contexts. Next, it is considered as general principle to the fulfillment of administrative function and state contracting, showing it as a tool in the adequate providing of public services. Finally, from the proposed dimensions, it is proposed as Law research approach, from which follow inquiry standards and evaluation of socio juridical subjects, as is the case of dispute solving in state contracting, a part of social life.

This research has a general objective define the applicability of AMCS in state contracting of working, consulting and concession in Metropolitan Area of Valle de Aburrá, considering law 80 of 1993. For this reason, methodological framework is design from a set of predefined research categories from which the subject studied is delimited. Among these categories, efficacy is chosen as theoretical and legal axis that defines the proper socio juridical subject. That is to say, from it is assessed the grade of resolution of contracting disputes through AMCS, insofar as it, preliminary, comprehends the obeying, fulfillment and implementation of legal provisions by their recipient, in this case, AMCS, as well as their capability of meeting the legal expectations of disputing parties.

This part of research is found in descriptive progress, implemented when we want to describe phenomena, contexts, situations and events. This is to say, to detail how it is and how it shows AMCS efficacy in those disputes arising from state contracting. Descriptive progress allows to specify properties, characteristics and profiles of people, process, objects or other research phenomena.

In our case, it is focused on efficacy and its developments: norm reception, ways of its apprehension, assimilation, comprehension and, of course, observance in legal relationships, in derived disputes or those needing settlement. This tries to describe those situations present at the moment of indagation of content input and goals of normative mandates in a given dispute between contracting parties. Thus, it is not seek to demonstrate the mutual influence between variables, on the contrary, for the benefit of readers, a clarification is intended on efficacy as phenomenon (Salkind, 1997).

Trying to discover some possible legal approaches about efficacy as category of research on AMCS, we part from some contributions of Law General Theory, then it is considered as general principle for the fulfillment of administrative function and state contracting. Then, from those two approaches the concept is taken as parameter of indagation and evaluation of sociojuridical objects like conflict resolution in state contracting.

### **EFFECTIVENESS FROM SOME ELABORATIONS OF LAW GENERAL THEORY**

So, vulgarly speaking, efficacy represents development, fulfillment or performance of some objective, task, function or role of some object or behavior towards something or some one. In this respect, both the object and human behaviour should have some previously defined and recognized object or purpose so that performance allows a valuation of behaviour considering its fulfillment, performance and scope.

Efficacy, in this light, is something that acts as predicate of human behavior's fulfillment or externalisation. In the field of scientific knowledge, it can measure, value or establish how much human behavior agrees with

an determined or imposed objective. This means that efficacy allows a correlation between intersubjective behavior's externalisation with the objective or final purpose expected from behavior, based on some previously defined objective criterion.

The objective or objectives of some behavior are defined from rules ruling behavior, trying to develop an obligation. Moral, conventional and legal rules are decisive in this process, all they defining objective of purpose of some expected behaviour from a social relevant value, defining the externalisation of human behavior obligations.

One of the tasks assumed by the norm - moral, conventional and legal - is to induce the subject to execute an estimated behavior, as obligation for the performance or protection of a socially relevant value. For the study of effectiveness, three essential components that allow its determination are revealed: human action or behavior, the norm that regulates such behavior and the purpose; elements from which the effectiveness functions as performance or fulfillment of a purpose or role that an object or behavior has regarding something or someone. These elements may approach Reale's definition of Law (1987), integrated by the social fact into its historical effectiveness, for our case represented in human behavior in relation, the norm as guiding mandate of behavior and value as the purpose of fulfillment through normative compliance:

wherever appears a legal phenomenon there is always necessarily an underlying fact (economic, geographic, technical, etc.); a value that confers a certain significance to that fact, inclining or determining the action of men in the sense of reaching or preserving a certain purpose or objective; and, finally, a rule or norm that represents the relation or measure that integrates one of those elements in the other: the fact in the value (Reale, 1987, p 158).

The foregoing finds in legal doctrine a significant support. When Jorge Parra (2002) refers to law, he does so as "a regulatory order of human behavior insofar as it has a social meaning, an order that seeks to fulfill certain values and that translates them into norms" (page 6); from this it follows that legal norms adopt certain structures to generate a behavior that corresponds with the fulfillment of values with a social sense, where efficacy needs to determine, estimate or value how much behavior faces the norm that regulates it, it achieves the fulfillment of the aforementioned final task through mandatory obligations.

Thus, efficiency finds a foothold in such traditional positions as Giorgio Del Vecchio, who defines law as "the objective coordination of various possible actions among several subjects according to an ethical principle that determines them, excluding all impediments" (Del Vecchio cited in Parra, 2002, p.7), and that of Rudolf Stammler, who states that law is "a self-sufficient and inviolable interlacing power" (Stammler cited in Parra, 2002, p.7).

The current understanding of efficacy is far from the Kelsenian explanation from which, between validity and normative efficiency, a relationship of dependence was woven: "A legal norm is only considered as objectively valid when the human behavior that it regulates is accommodated. In fact, at least to a certain degree" (Kelsen, 2009, p.24). From this followed that, for normative validity, a minimum degree of effectiveness was necessary. But in law it has been clear that legal norms can be valid without necessarily fulfilling some degree of effectiveness; not even the smallest, demarcating the field both of formalism proper to the positivism to which Kelsen ascribed, and of the sociological or phenomenological in which efficacy takes place.

Hence, in the Pure Theory of Hans Kelsen (2009) such separation appears, to the extent that "a legal norm acquires validity before being effective, that is, before being obeyed and applied" (p.25); This is why Kelsen (2009) subjected efficacy to validity by proposing that "effectiveness is a condition of validity to the extent that effectiveness must appear in the imposition of the legal norm, so that it does not lose its validity" (p.25).

On the other hand, it is considered that efficiency finds its niche of inquiry in the implementation of human behavior externalized in society, considering a duty to be coercible or imperative that draws a legal norm endowed with the elements of bilaterality, heteronomy and the coercibility for the safeguarding, realization and maintenance of value. From this, prevalent objects requiring the regulation of legal norms are defined and identified.

Effectiveness investigates in a field given by the exploration of socially expressed behaviors, advancing through such exploration in the identification of subjects' moments, places, circumstances and qualities, understanding that like any other human behavior compliance with the norm is a phenomenon that occurs in the social and, therefore, is subject to its mutable and dynamic nature. It can, subsequently, define and describe those behaviors as to assure their typical adaptation to the objective references that integrate, in a traditional way, a legal norm that regulates human behavior: fact and consequence. From these it is intended to ensure well-being and coexistence, or on the contrary, to extract from the aforesaid definition and description the reasons explaining why originally externalized behavior deviates from the objective sense outlined by legal norm.

So, effectiveness appears as an articulating category between regulatory legal devices of human behavior, traditionally the norm in its structural or formal sense, material or content, and finalistic or teleological, and human behavior as a substratum through which a sense is externalized, and society as a recipient of it, since the duty to be expected from behavior, expressed from the tax message left by the norm in the subject, is assumed as expected behavior.

Norberto Bobbio (1987) establishes three criteria for assessing rules of conduct, from which he considers possible to construct a theory of legal norms. The first criterion lies in the problem of justice, where the correspondence of the norm and values or purposes that inspire a legal order are evaluated, a problem that he calls deontological law (p.21). The second has to do with the problem of norm's validity, which concentrates on the problem of the existence of the being of the norm, independent of the value judgment to which it can be submitted, and which he calls the ontological problem of Law (p.21). Finally, Bobbio establishes the problem of norm's effectiveness, which he calls a phenomenological problem, consisting in whether the disposition is or is not fulfilled by the persons to whom it is directed, insofar as the fact that the norm is valid or just does not ensure that it is carried out or complied with by the recipients (p.22).

Following this, Parejo (1995) defines efficiency as that which is primarily required, not only to act or performance something, but to do in order to "solve" social problems; that is, producing, in each case, a certain effective result, a "work" intended and designated as purpose or objective in diagnosing the problem in question (page 89). In this sense, efficiency is understood as a legal duty that requires and demands both fulfilling the general interest and carrying out the reorganization, innovation and strengthening of the institutionality; in order to provide the means, structure and establish the necessary processes to achieve it.

In the same direction, in the course of a previous investigation (Vásquez-Santamaría, 2011), legal effectiveness is linked, primarily, with the legal norm, as a modality "that denotes an obligating, compelling, general and character, also capable of fulfillment by coercive means, promulgated by a sovereign, legitimate and competent authority" (p.50). But although the legal norm has such significant attributes in no way is certain that it will be met by the recipients: "Legal norm effectiveness represents its applicability and compliance" (Vásquez-Santamaría, 2011, p.50). This notion of applicability, following Navarro and Moreso (1996 cited in Vásquez-Santamaría, 2011), "is linked to the identification of the real conditions of legal normative propositions" (p.50), related to the deontological qualification of an action. In this same sense, Prieto (2001, cited in Vásquez-Santamaría, 2011) explains:

In a multifaceted analysis of Law it is not enough for the norm to exist formally and be demanded, but with the objective that it fulfills the functions for which the Law was created, so that it channels, limits, guarantees and educates it is necessary that norms may be real or materially applied, that the situations for which they were created exist; that their mandates, even when they are not voluntarily fulfilled by special devices available to the State, effective sanctions for non-compliance with the prohibitions, or guarantees for the realization of the prescriptions and

recognized rights. In other words, that the rule of law has a social realization. Efficacy in terms of the real utility of the norm in society, the effectiveness of the regulation, the actual concretion between what is legally said and the social fact, which leads to the fulfillment of Law; an efficiency of functional type (p.51).

But if we assume that efficiency is the phenomenological problem of Law, strongly linked to the receptivity and fulfillment of legal power in the intersubjective behavior, it should be noted that it faces a set of obstacles demanding awareness and attention. Whenever a standard can be assessed as ineffective, against the purpose that explicitly derives from its content, it can be more effective in relation to hidden, disguised or different objectives, important to avoid distortion in the results of the investigations that come out of it.

Many of these obstacles can be assessed from symbolic efficacy of Law, as proposed by Mauricio García Villegas. Following this author, Lozano and Ramírez (2015) explain distinguish symbolic efficacy from instrumental effectiveness. The latter “examines the adequacy of the results of a standard after its implementation, compared to the proposed objectives. If the legal norm has the capacity to produce the desired effects, then it can be said to be instrumentally effective” (p.4). On the other hand, the provision will not be instrumentally effective if it fails to produce the result or, on the contrary, generates a not expected one, giving rise to symbolic efficiency:

symbolic efficiency is norm effect considered as a symbol, that is, the message behind a norm that may be effective or may be not in its application and in the fulfillment of explicitly proposed objectives, but also effective in terms of some other objectives undeclared (Lozano and Ramírez, 2015, p.5).

Cruz (2012) explains that legal plurality, in part, has promoted ineffectiveness of the rules promulgated by the State, to the extent that they are not carried out in the ways in which they were conceived, nor do they achieve rights fulfillment. Similarly, citing García Villegas, argues that from symbolic efficiency of law the ineffectiveness of legal rules can be an effect “preconceived and desired by its authors, and even taking advantage of political rhetoric to respond to ‘an intelligent game for the sake of strengthening certain interests’, and in turn, to neutralize or mitigate others” (García, 1993 cited by Cruz, 2012, p.295).

The phenomenon of symbolic efficacy of the law consists, then, in transmitting, through legal discourse, an image or representation of the social in which some values and interests are placed above others, giving them legitimacy in a community: “symbolic efficiency must be understood as a deliberate strategy of the institutions that create or apply the law, consisting of ignoring the normative objectives for the benefit of other undeclared objectives” (García, 1993 cited by Cruz, 2012, p.296).

Similar is the position of Martha Isabel Gómez (2014) who, starting from symbolic nature, which in many cases falls on criminal, especially environmental aspects, assures that “symbolic is understood as a general strategy that involves the creation of norms to put in execution a certain political objective, which can suppose that norm does fulfill some practical effects” (García, 1991 cited in Gómez, 2014, p 42). Also, according to De Gómez (2014), it is clear that not always the symbolic should be read as inefficient, if you remember that rules have a certain effect on the recipient, often different from the intended one, but they also generate another effect, allowing to see that studies on legal phenomenology should be attentive to the dimensions of the scope and purposes made by the standards; even with those with closed senses, like rules.

On the basis of Criminal Law, Gómez (2014) proposes general prevention as an argument in favor of symbolic function of law, a task carried out mainly by citizens faithful to the law provided that there is a “natural tendency to respect it with the law”, in order to restore the institutional trust that they have in the legal system, affected if someone performs a behavior considered offensive” (p 43). But general prevention is blamed for the mere generation of the sense of security in the protection of legal goods or socially relevant values, which can be explained from the feeling of assurance in the faithful citizenship, careful of legal provisions, ignoring the real transgressions of the offenders of the norm. Gómez (2014) recognizes the function of symbolic efficacy of the Law based on the configuration of values in legal norms, so that they do not have an instrumentally proven efficacy; but, once again, she shows that it falls into the public impression of an effect that does not really correspond to the purpose sought by the norm.

Facing the edges that the effectiveness of law must confront, and in particular in the case of the investigation of a subject as critical as the effectiveness of AMCS in the resolution of state contracts, reflections such as that of Julieta Lemaitre (2009) are read in a way that is really pertinent and incisive: “if law seems to impact violence and poverty so little, how can be explained the faith they seem to arise in so many citizens?” (p. 23). From the relationship between law and violence and law and social movements, Lemaitre (2009) emphasizes a bloody duality to which the potential of research on the effectiveness of law seems not to respond:

How to explain this paradox of a country that at the time bleeds and rises up relying on law? How to explain that a country with a weak State, a country of growing violence and impunity is at the same time a country of laws, of judgments, of courts wanted and used by its citizens? A country of violence that is a country of rights at the same time? What is the relationship between one and another reality? (p.25)

Such Reflection can not be more appropriate for legal science and for the countless demands that the social scenario places on it. Is the efficiency and the phenomenological problem of Law reserved for the dogmatic tradition that still carries legal research? Have we allowed the potential of the investigation of legal effectiveness to become a victim of the deconfiguration of social reality, allowing, in some way, only one of the images to emerge from it? Or perhaps is it that research focused on effectiveness of Law has been unprepared and irresponsible in the face of effects of symbolic efficacy, without verifying the true results of instrumental efficacy?

From studies of the relationship Law and violence, Lemaitre (2009) sustains the subsistence of three theories. The first one works on the Law as a limit to the exercise of violence coming from the State and from individuals, a theory based on the conception of the liberal State. The second, based on Marxism, attacks Law as an instrument of domination, a door to violence. Finally, the third position fuses the idea of Law as an instrument of the coercitive power of violence and a mechanism by which abuses are limited; so making law an autonomous force that can be used for the protection of the most vulnerable people, emphasizing its potential usefulness. This third theory, for Lemaitre (2009), has its roots also in Colombia, in the symbolic efficacy of Law:

Many legal reforms benefit the groups that have power even if law itself indicates otherwise. This happens, first, because these reforms have no important instrumental effects, and second, because they are destined not to be applied but to legitimize the ruling class or the State by making them appear as inclusive and democratic (p.27).

While the effectiveness of provisions of the legal system is aimed at the totality of the recipients who submit to the rule of law, it seems clear that among them the State is in great part responsible for gathering all the prerogatives to account for its effectiveness, because it is a source of emanation of Law through the public authorities that comprise it, executor of the normative contents and judge in the resolution of controversies, when they were diverted, unknown or altered by those who were in the duty to perform them, in accordance with the purpose drawn by the same device.

From the foregoing it is clear that, in the national legal order, and especially for the exercise of State contracting, efficiency has taken on the nature of a general principle, unlike that efficiency sought from each particular provision, which entails a prevailing political legal content as an optimization mandate that permeates the administrative function and state contracting in Colombia.



## **EFFECTIVENESS FROM ITS NATURE OF PRINCIPLE IN ADMINISTRATIVE FUNCTION**

Effectiveness as a principle is found in Political Constitution, article 209, to guide the exercise of the administrative function. In this sense, within the Public Administration and the Administration of Justice, if general interests that must be protected by the Social Rule of Law prevail, efficiency is recognized as a necessary principle for guaranteeing and protecting constitutional rights; purpose that should be promoted by all the branches that compose its structure:

State social determination expresses the duty that corresponds to all public powers to promote -effectively- real and effective conditions for freedom and equality of the individual (and the groups in which it is integrated), as well as the necessary removal of obstacles that impede or hinder its fullness (Descalzo, 2011, p.146).

Colombia's character of Social State of Law conditions institutional actions in the strengthening of organizational values and principles as ways to achieve state and democratic legitimacy, through real effectiveness in the resolution of conflicts and satisfaction of the needs. For this it must guarantee that Public Administration is capable of complying with the constitutional precepts. From this approach, follows the recognition of effectiveness as a condition of the operation of the Public Administration; making it possible to demonstrate the results of the exercise of the administrative function that materialize in the proper functioning of internal processes, in response to external demands, that is, in the fulfillment of the administrative function and of public policies, as affirms Uranga (1989):

Effectiveness occurs when in that black box, as a result of those internal processes, the value of the outputs, measured in terms of services provided and effectively required by citizens, is greater than the inputs that were previously deducted from them through fiscal procedures or of any other type. Synthetically, then, we can define administrative efficiency as the difference between obtained results and means available to Administration (p. 99).

The verification or evidence of compliance with the legal and regulatory mandates, a task of administrative function in Colombia, make effectiveness a constitutional and legal principle that guides the exercise of that function. Constitutional Court, by Ruling C-826 of 2013, explains the effectiveness as a principle in this way:

In this regard, the Chamber has pointed out that effectiveness constitutes a quality of administrative action in which the validity of social status in the legal-administrative sphere is expressed. Likewise, they add that ultimately, efficiency is the translation of positive constitutional duties in which the superior value of equality is derived directly from State's note or attribute of sociality [...] this principle of administration imposes duties and obligations to the authorities to ensure the adoption

of preventive measures and the attention to the citizens of the country, to ensure their dignity and the effective enjoyment of their rights, especially to those who are in situations of vulnerability and manifest weakness, the prison population, victims of natural disasters or internal conflict, population in a state of indigence, so that on many occasions the public administration has been ordered to adopt necessary measures that are really effective in overcoming the institutional and humanitarian crises generated for such situations, this never being presented as a budget type argument.

So, it is evident to this Corporation that the principle of effectiveness prevents the administrative authorities from remaining inert before situations that involve citizens in a negative way with their rights and interests. Likewise, that the effectiveness of the measures adopted by the authorities must be an end for them; that is, that there is an obligation to act on behalf of the administration and to make a real and effective execution of the measures that must be taken if it is necessary, in harmony and in accordance with the due administrative process.

Cited elements, which make up effectiveness, require criteria and mechanisms of control or correction proper of administrative organization, through the application of certain models or evaluation techniques that allow to measure the effects and settle the degree of efficiency or inefficiency achieved. However, effectiveness evaluation, constituted as a true legal principle, can not be only posterior; that is, centered on the results or objectives achieved and those that do not “control the effectiveness that must be developed, an ex ante control and refers to the correct execution of the principles of organization, management, planning and control that in a broad sense they are understood in the Constitution” (Uranga, 1989, p.101). These aspects outline parameters of inquiry for the exercise of state procurement in which it applies.

In this regard, effectiveness requires correspondence of the other principles listed in Article 209 of Political Constitution; that is, that the institutional action is oriented by equality, economy, speed and impartiality to achieve “effectiveness in meeting the proposed objectives” (Descalzo, 2011, p.149). Descalzo (2011) describes Public Administration as having a demanding central role of effective action in the satisfaction of the general interest. For its part, Parejo (1995), who refers to efficiency as a principle and value, recognizes that Public Administration must be ruled by efficacy “with full submission to the Law” (p. 22)<sup>6</sup>. This means a referral to the decision of the ordinary legislator with respect to those norms, means and instruments in which the consecration of efficacy takes place (Parejo, 1995).

From the necessary correspondence of effectiveness with other principles that guide the exercise of administrative function, effectiveness especially interweaves with

---

6 Parejo (1995) explains that this submission is both in the execution of programs that are defined by law, and in the application of the specific rules of the legal system. This submission is defined in the achievement of effectiveness around the general interest; as it is presented by Descalzo (2011).

efficiency. Parejo (1995) states that efficiency is defined as the suitability of an activity that is directed to an end; that is, at the end that seeks efficiency as a quality that leads to "effect" or, if you prefer, "success" as a criterion of Public Administration legitimacy. For its part, Constitutional Court, in Ruling C-826 of 2013, defines efficiency as:

the maximum rationality of the cost-benefit ratio, so that public administration has the duty to maximize the yielding or the results with lowest costs, since the financial resources of the Treasury, which tend to be limited, must be well planned by the State, so that they have as purpose to satisfy communal priorities without wasting public funds.

As a criterion, efficiency appeals to the relationship between the resources used and the results obtained from any administrative action. It requires possession of means and application or adaptability to achieve the objectives through established processes. In this way, it becomes important and necessary to determine the criteria or techniques for assessing effectiveness, given the special complexity surrounding its ultimate objective or purpose: the realization of general interest or the guarantee of public ones, such as Benavente establishes (2009). Among the criteria for the evaluation of obtained results (effectiveness) and the process implemented (efficiency), first is required to establish proper methods of evaluation, among them the so-called total quality method (Descalzo, 2011), management by objectives and quality as an ordinary form of public service provision (Uranga, 1989), the plurality of objectives and the correspondence between purposes and functions (where major conflicts occur) (Parejo, 1995). Descalzo (2011) refers to another criterion:

The fundamental element of new regulation is, in any case, the evaluation of the performance of public employees; in which the aforesaid personnel will be subject to evaluation according to effectiveness and efficiency criteria, responsibility for their management and control of results in relation to the objectives set for them (p.150).

Constitutional Court, in the Ruling C-826 of 2013, on the creation and implementation of quality control system in state entities, refers to the quality management system adopted by international guidelines and establishes it as a model that seeks effectiveness of public administrative processes. Nonetheless, that does not yet define the evaluative scope in the fulfillment of management and quality. With respect to the purposes of this system, they state:

since service's quality and users satisfaction directly concern the purposes of the Legal Social State and the effective enjoyment of citizens' rights, through quality management tools created and designed by the Legislator, and the Constituent introduced control of management and results, so that the provision of services by the State and tax collecting do not escape the control of legal system and thereby achieve user satisfaction, guaranteeing constitutional rights of citizens and community in general.

Thus, effectiveness as a principle of fulfillment of the administrative function includes axiological and legal-political content, aiming at the fulfillment of that function of public power. With this, it permeates not only the administrative function but the contractual capacity of the people attached to the exercise of this function, encompassing the implementation of public policies and promoting evaluation as a measure of control and improvement of Public Administration.

## **Conclusions**

In the legal order a provision can be analyzed from several approaches. Although they can be articulated with each other, they are not necessarily linked in a strict dependency relationship and, on the contrary, allow their separation in exercises and research projects that seek the comprehension of several dimensions of the disposition adopted as an object or part of an object of study. Efficacy is one of those approaches, and can often be related to the validity or axiological burden of a provision, since it has a content and delimited meaning that gives it identity in legal science which allows to advance particular investigations sustained from it.

To affirm that efficiency has a defined and delimited content does not mean to ensure that it is univocal and unidirectional, insofar as it consolidates some possible dimensions that enrich it as an approach to the advancing of law research. But though from it several scopes are released it is not an indeterminate legal concept. Effectiveness can have two dimensions, both as a category of analysis, rather than the legal norms of legal devices regulating social life (norm, custom, principle, value), and as a principle of the administrative function. These dimensions are found in a primary idea that defines his identity: fulfillment. Therefore, effectiveness could have been placed next to validity and justice as a criterion of study and analysis of legal norms, but for its essential purpose of understanding the realization, it discards the possible contradictions that subject it to legal validity, showing that there may be legal norms that are fair and effective or ineffective, or effective and valid or invalid.

Soundness of effectiveness as a category follows from the coincidence of meaning that is built from the contributions of the Law General Theory, as well as those of Administrative Law, in the administrative function and state contracting. In both, efficiency means verification of a result imposed by some device, which leads to associating it with fulfillment, compliance, or materialization. From these several components define the investigative approach to efficacy for a work focused on a sociojuridical study object. Initially, it is proposed to work from the subjects, from the device that imposes the behavior, and from the reached goal.

From the subjects, to the extent that there is no recipient other than the person, either natural or legal, public or private, in whom lies the ability

to fulfill the purpose imposed by a legal device. The foregoing implies that effectiveness, necessarily, is defined from the realization or not of the behavior of the recipient of legal device, so it is not possible to abstract their inquiry from social dynamics. Regarding the subjects, it is necessary to identify who corresponds to the quality of the recipient of the legal mandate, detailing whether the quality of the active subject or taxpayer is there, whether it is a natural or legal person, public or private, and the number of subjects over which it is imposed.

From these qualities it is clear the nature of the purpose outlined by the rule, to the extent that it is not the same that provides a rule that regulates a behavior of a legal person of public law to an individual in a private legal relationship. In this way, characterization of the recipient defines and delimits the desired coercive duty, and with this, it becomes a parameter of verification of the potentially different ends reached from legal prescription, helping investigations on the effectiveness of the apprehension of the fact-end relationship, to even verify the realization of the fact-consequence relationship.

From the experience or behavioral exteriorization of the subject it is possible to investigate the frequency of fulfillment, without being able to rely on a quantitative data, since it is probable that, although norm recipient is general, in real life there may be few found in factual situations.

The frequency or sustained nature of reception of normative mandate is a very important sign, but not conclusive for an investigation on effectiveness, to the extent that it translates raw material into the ideal in order to pursue the understanding of achieved goals. But the fact that there is a high and constant frequency of compliance with the provision does not make it possible to affirm the frequency and security of purpose fulfillment. In this case, compliance with the content of legal device may lead to the fulfillment of one or several hidden or deviant tasks, which load provision's content material, defrauding instrumental efficacy and feeding the indicators of symbolic efficiency. In the same way, the low frequency or recurrence of the addressee to the content of the legal device can not be translated into its inefficiency, to the extent that low frequency does not necessarily means non-fulfillment of the intended purpose, so that the high recurrence of compliance with the legal regulatory device does not correspond to its instrumental efficacy.

From the above, effectiveness can not be relied only on the performative frequency, constancy or mass of the assignment set by the provision, to the extent that it is necessary to search whether the behavior reaches the purpose fulfillment imposed by prescription and legitimizes legal device as a behavioral regulatory instrument. Hence, an investigative approach, based on effectiveness, is supported in the fulfillment, externalization or materialization of behavior, but must go beyond the verification of the

fulfillment of the goal reached by the aforementioned behavior. Hence the difference of the instrumental efficacy of symbolic efficacy.

The device that contains the mandate or legal prescription is a second component, since it constitutes the instrument of contrast or correlation with externalized human behavior that generates effects in social life. As a point of reference, the device is, for effectiveness, the parameter of assessment of behavior performance, as well as the level of accomplishment of the intended purpose; in other words, the device is plotted as the reference point to weight behavior performance with respect to the end, both fixed in the legal device.

The correlation between externalized behavior, legal imperative, and purpose, allows a triangulation from which it becomes possible to determine the incidence of time, place or scenario, cultural, economic and political conditions that influence the correspondence or not of the behavior due to that one actually executed.

Finally, with the aim of proposing the essential elements that can integrate a methodological approach to the effectiveness of legal research, the following steps are proposed: first, it is essential to be aware of effectiveness as a category of analysis of legal expressions predominantly positivists, in the case of the continental legal model, and secondarily naturalists, understanding and differentiating their possible relationships both with categories such as validity and justice and with elements of legal devices, such as structure, content and purpose.

## REFERENCES

- Benavente, H. (2009). La notificación como condición de eficacia de los actos administrativos. *Opinión Jurídica*, 8(15), 29-44.
- Bobbio, N. (1987). *Teoría General del Derecho*. Bogotá: Temis.
- Céspedes, F. (2012). *Control al control de la contratación pública*. Bogotá: Auditoría General de la República.
- Congreso de la República de Colombia (1991). Ley 23. Retrieved from: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6546>
- Congreso de la República de Colombia (1993). Ley 80. Retrieved from: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=304>
- Congreso de la República de Colombia (1996). Ley 270. Retrieved from: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6548>
- Congreso de la República de Colombia (2001). Ley 640. Retrieved from: <http://www.secretariassenado.gov.co/senado/basedoc/>

ley\_0640\_2001.html

Congreso de la República de Colombia (2009). Ley 1295. Retrieved from:  
[https://www.icbf.gov.co/cargues/avance/docs/ley\\_1295\\_2009.htm](https://www.icbf.gov.co/cargues/avance/docs/ley_1295_2009.htm)

Congreso de la República de Colombia (2011). Ley 1437. Retrieved  
from: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=41249>

Congreso de la República de Colombia (2012). Ley 1563. Retrieved  
from: [http://www.secretariasenado.gov.co/senado/basedoc/ley\\_1563\\_2012.html](http://www.secretariasenado.gov.co/senado/basedoc/ley_1563_2012.html)

Corte Constitucional (1989). Decreto 2279. Retrieved from: [https://www.icbf.gov.co/cargues/avance/docs/decreto\\_2279\\_1989.htm](https://www.icbf.gov.co/cargues/avance/docs/decreto_2279_1989.htm)

Corte Constitucional (1997). Sentencia C-242. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/1997/C-242-97.htm>

Corte Constitucional (1998). Decreto 1818. Retrieved from <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6668>

Corte Constitucional (2001). Sentencia C-893. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/2001/c-893-01.htm>

Corte Constitucional (2002). Sentencia C-417. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/2002/C-417-02.htm>

Corte Constitucional (2005). Sentencia T-017. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/2005/t-017-05.htm>

Corte Constitucional (2009). Decreto 1716. Retrieved from <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=36199>

Corte Constitucional (2013). Sentencia C-826. Retrieved from <http://www.corteconstitucional.gov.co/RELATORIA/2013/C-826-13.htm>

Cruz, M. (2012). Múltiples derechos, la misma desprotección: la eficacia simbólica de los derechos de las mujeres indígenas desplazadas en Colombia. *Estudios Socio-Jurídicos*, 14(2), 289-326.

Descalzo, A. (2012). Eficacia administrativa. *Eunomía. Revista en Cultura de la Legalidad*, (2), 145-151.

García, H. O. (2005) Eficacia, efectividad y eficiencia de las normas que regulan el ejercicio del derecho de huelga y sus métodos de composición. *Apuntes críticos*. Buenos Aires: Universidad de Buenos Aires.

Gómez, M. I. (2014). La protección penal ambiental: uso ilegítimo de las funciones simbólicas del Derecho. *Ratio Juris*, 9(19), 27-52.

Kelsen, H. (2009). *Teoría Pura del Derecho*. México: Porrúa.

- Lemaitre, J. (2009). *El Derecho como conjuro. Fetichismo legal, violencia y movimientos sociales*. Bogotá: Universidad de Los Andes.
- Lozano, E., y Ramírez, A. F. (2015). Eficacia normativa en materia tributaria. *Revista de Derecho Público*, (35), 4-23.
- Navarro, P. & Moreso, J. J. (1996) Aplicabilidad y eficacia de las normas jurídicas. *Isonomía* (5), 119 – 139.
- Parejo, L. (1995). La eficacia como principio jurídico de la actuación de la Administración Pública. *Eficacia y Administración*, 89-152.
- Parra, J. (2002). *Manual de Derecho Civil*. Bogotá: Temis.
- Real Academia Española (2017). Retrieved from <http://lema.rae.es/dpd/?key=eficacia>
- Reale, M. (1987). *Introducción al Derecho*. Madrid: Pirámide.
- Salkind, N. J. (1997). *Métodos de investigación*. México: Prentice Hall.
- Uranga, C. (1989). El principio de eficacia en la organización administrativa: hacia una administración por sistemas. *Revista de Documentación Administrativa (1958-2005)*, 218-219. Retrieved from: <https://revistasonline.inap.es/index.php?journal=DA&page=issue&op=view&path%5B%5D=283>
- Vásquez-Santamaría, J. E. (2011). Aplicabilidad de las disposiciones normativas del Derecho Urbano en relación con el espacio y el territorio en Colombia (2000-2007). Medellín: Fundación Universitaria Luis Amigó. Retrieved from: [http://www.funlam.edu.co/uploads/fondoeditorial/86\\_Aplicabilidad-de-las-disposiciones-normativas-del-derecho-urbano.pdf](http://www.funlam.edu.co/uploads/fondoeditorial/86_Aplicabilidad-de-las-disposiciones-normativas-del-derecho-urbano.pdf)
- Vásquez Santamaría, J. E. (2018). Algunos problemas “públicos” de la contratación estatal en Colombia como componentes del enfoque de ciclo para la formulación de una política pública. *Prolegómenos*, 21(41), 79-98.