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General pensions regime in Colombia. Relevant aspects of the reforms

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I. Introduction

This work presents, as first instance, a global panorama of the antecedent pension systems, followed by the brief study of the 1991 constitutional reform and, consequently, the presentation of the General Pension System established by law 100 of 1993 and its regulatory decrees, which was subject to amendment and complementation by means of the recent enforcement of Laws 797 of January 29 2003 and 860 of December 26 of the same year.

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The last part of our presentation will present a brief analysis of the current constitutional reform project of our country, together with some conclusions derived from the study carried out.

II. Normative count and analysis

2.1. Antecedent pension systems

2.1.1. Employers system

From the normative historic review we find specific antecedents of pension regimes in Law 6th of 1945 which in its article 12th provided:

> "Art. 12. Until the mandatory social security has been organized, the employer will be responsible for the following indemnities or fringe benefits for its workers, whether employees or factory men: ..."

Within the fringe benefits referred to in Law 6th of 1945 on the matter under study, we find the retirement pension contemplated in article 17 paragraph b), as follows:

> "Art. 17… paragraph b). Life retirement pension, when the employee or worker has reached or reaches fifty (50) years of age, after twenty (20) years of continued or discontinued service, equivalent to two thirds of the average of salaries or wages earned, not less than thirty pesos ($30.00) nor more than two hundred pesos ($200.00) per month…"

2.1.2. Social Security System

Law 90 of 1946 created the Colombian Social Securities Institute (ICSS), with the responsibility of administering among others, the Mandatory Social Security for Disability, Old Age and Death and provided in its articles 72 and 76 a transition regimen by way of subrogation of fringe benefits in the following terms:

> "Art. 72. The fringe benefits regulated in this law, that by virtue of previous regulations had been for the account of the employers, will continue to be governed by said provisions until the date on which the social security gradually assumes this responsibility after the prior contributions established for each case have been accomplished.
>
> As from that date, the services established herein will begin to become effective and the previous provisions will cease to apply."
>
> "Art. 76. The old age insurance to which Section Third of this law refers, will replace the retirement pension that has been applied in the previous legislation. In order that the Institute may assume the old age risk with respect to services rendered prior to this law, the employer must contribute the corresponding proportional quotas. The persons, entities or enterprises that in accordance with the previous legislation have the obligation to recognize retirement pensions for their workers, will continue to be affected by that obligation under the terms of said norms, with respect to the employees and workers who have been at their service, until the Institute has agreed to subrogate them in the payment of said eventual pensions.
>
> **In no event will the conditions of the old age insurance for those employees and workers who at the time of the subrogation have been working at least during ten (10) years at the service of the persons, entities or enterprises to be subrogated in this risk, be less**

> **favorable than those established for them by the retirement legislation prior to this law."[1] (We highlight).**

In fact, although it is true that in our country, with the transit of legislation, the temporary effectiveness of certain norms has been customarily maintained as a transition regime, it is not less true that, according to the same normative provisions these situations are restrictive, exceptional and limited.

For the case under study and particularly with respect to the risk of pensions, there is no doubt whatsoever that it was through the enforcement of Law 90 of 1946 that the structural basis of the institutional social security system were established, because this law, among others, created the Colombian Social Securities Institute (ICSS) and determined its operating conditions; however, and considering that since this was an insurance system whose application and operation depended on the capturing of economic resources, it was necessary to create a temporary regime for the account of employers which was introduced, in the private sector, through the enforcement of the Substantive Labor Code (C.S.T.).[2]

2.1.3. The resurgence of the employers system as transitory

This is how the obligation of the ICSS created since the first moment, was temporarily assigned to the employers under the terms provided by articles 72 and 76 of Law 90 of 1946 and 259 and 260 and subsequent articles of the C.S.T.

On the matter of pensions, the C.S.T. established:

> "Article 259. The retirement pensions, the disability aid and the collective mandatory life insurance will cease to be for the account of employers when the corresponding risk is assumed by the Colombian Social Securities Institute, pursuant to the Law and within the regulations issued by the institute itself.
>
> Article 260 - Right to pension. 1. Any worker rendering his services to the same enterprise with a capital stock of eight hundred thousand pesos ($800,000) or more, who reaches or who has reached fifty five (55) years of age, in the case of a man, or fifty (50) in the case off a woman, after twenty (20) years of continued or discontinued services, prior or subsequent to the effectiveness of this code, has the right to a life retirement or old age monthly pension equivalent to seventy five percent (75%) of the average of the salaries earned during the last year of service. 2. The worker who retires or is retired from service without having reached the age above mentioned, has the right to the pension when he has reached that age, provided he has met the requisite of twenty (20) years of service."

The Board of Directors of the Colombian Social Securities Institute (ICSS) issued the General Regulations of the

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[1] Hereafter, all the fragments of a text shown in boldface typography, respond to the intention of underlying aspects of the law that, having a relevant connotation for the author, will be subject to at depth study and analysis in the document.

[2] The C.S.T. corresponds to Decrees 2663 and 3743 of 1950; it became effective since 1951 and was adopted as a permanent legislation by Law 141 of 1961.

Mandatory Social Security for Disability, Old Age and Death through Agreement 224 of 1966, which was approved by article 1st of Decree 3041 of the same year. This statute authorized in its articles 2nd, 59th, 60, 61 and 62, the conditions for the application, exclusion and subrogation of employers pensions; however, the call for inscription to this insurance became mandatory in a progressive manner by territories, starting in Bogota and other cities as from January 1 1967, without having reached up to 1993 a complete coverage of the national territory.

Article 2nd of the aforementioned regulations, when defining the field of application, excluded from said insurance workers who, having affiliated **for the first time,** had reached the age of 60.

On the other hand, article 59th excepted from the obligation to affiliate those workers who, at the time of the enforcement this obligation, **had reached 20 years of continued or discontinued services in the same enterprise**[3] **with a capital of $800,000.00**[4] **pesos or more.**

It also excepted from that same insurance those who, **at the initial time, were enjoying an old age pension for the account of an employer.**

The norms contained in articles 60 and 61 of that statute, provided the transition of the regime through the structuring of a legal pensions sharing system[5], that is, in the first event, for full retirement pensions in favor of workers who, at the start of enforcement of the obligation to affiliate, had 15 or more years of continued or discontinued services in the same enterprise with a capital of $800,000.00 pesos or more, for whom it contemplated the possibility of claiming the retirement pension from his employer at the time of meeting the requisites of age and years of service provided in the C.S.T., with the obligation on the part of the employer to grant this pension and continue quoting to the then ICSS until the requisites demanded in the regulations for the granting of old age pension for the account of the latter had been met. The Colombian Social Securities Institute had to recognize the old age pension and the employer would have the obligation to continue paying only the higher value, if any, between the pension that he was canceling and that recognized by the Institute.

Article 61 also regulated the situation of partial subrogation of the pension, by express referral to article 60 above mentioned, for workers that at the initial time[6], had 10 or more years of continued or discontinued service in the same enterprise with a capital of $800,000.00 pesos or more. Additionally, it established that in the event of dismissal, with no justified cause, the provisions of article 8th of Law 171 of 1961 would apply, that is, the sanction pension, with the obligation on the

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3 An enterprise is considered as the economic exploitation unit organized with profit purposes; therefore, all employers not having the characteristics of an enterprise were left outside this regulation.

4 Fixed value in pesos that was not subject to adjustment or up-dating.

5 Juridical institution that permitted the partial subrogation of fringe benefits that were for the account of employers who, via affiliation and payment of contributions to the Institute, transferred to the latter part of the pension benefit, maintaining only the responsibility for the higher value, which meant sharing the responsibility of the old age risk coverage.

6 The initial time is the date as from which the Board of Directors of the ICSS issued the call for mandatory affiliation in the respective territorial zone.

part of employers to grant this pension and to continue quoting to the ICSS until the requisites provided for in the regulations for the granting of an old age pension for the account of the latter had been completed. The ICSS should recognize the old age pension and the employer on its part, would have the obligation to continue paying the sanction pension that it had been canceling.

The above provision should govern only during the first ten (10) years of effectiveness of the regime; however, it was not until the amendment introduced by Agreement 029 of 1985[7] when this situation was clarified by the express authorization of the sharing of the sanction pension.

Finally, article 62 of the General Regulations of the Mandatory social Security for Disability, Old Age and Death provided for the substitution of employers pensions in the following terms:

> "The fringe benefits of the Disability, Old Age and Death insurance provided for in these regulations will substitute, de jure, the employers obligations established for such risks by the Substantive Labor Code, with the exceptions contemplated in the above mentioned articles with respect to the old age risk."[8]

On the occasion of the issuance of this statute, two basic situations were generated on the matter of pensions: excluded or excepted workers (articles 2nd, 3rd and 59) and mandatory affiliates (Articles 1st, 60th and 61st). Likewise and as a consequence of the above, three situations to be considered were legally and jurisprudentially defined:

a. Pensions exclusively for the account of employers (the rights acquired, those excluded from the regime for reason of age or years of service Art. 59).

b. Shared and concurrent legal pensions (Articles 60 and 61 – for workers who at the time of the call for affiliation had more than ten years of service with their employer) and,

c. Pensions exclusively for the account of the ICSS. (For workers that at the time of the call for affiliation, had less than ten years of service with their employer).

It is important to point out that the institutional coverage of the ICSS, only in an exceptional manner and after the year 1977 when it was transformed into the Social Security Institute (ISS), accepted the inscription of public sector workers.

Different from the employers system and since it was an institutional security system, it demanded the payment of contributions destined to construct the basic capital that would constitute the future pension. The responsibility for quotations had been the responsibility of the employer and they were distributed in this manner: 25% of the Basic Salary[9] for the account of the worker and 75% of the Basic Salary for the account of the employer.

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7 Announced by the Board of Directors of the ICSS on October 17 1985, and approved by article 1st of Decree 2879 of the same year.

8 This norm was annulled by the State Council by verdict of April 9 1973.

9 In this system contributions were paid on the basis of the so called «Monthly Base Salary» that resulted from the classification of the salary reported at the time of affiliation or after the changes introduced.

The payment of contributions in the institutional system of the Mandatory Social Security for Disability, Old Age and Death administered by the ISS at that time, was structured according to a classification of the salaries reported with respect to a "List of Categories" issued by the same Entity.

The classification referred to above leaded to placing the salaries reported in a given category corresponding to intervals previously determined in minimum and maximum values, to which an average reference value was assigned known as Base Monthly Income.

The system lead to the liquidation of contributions in most cases on the basis of a Base Monthly Salary that did not correspond to what had been actually earned and, additionally, established a limit that resulted in the creation of an insurable maximum salary[10] which, we repeat, did not correspond to the salaries actually earned.

With respect to the categories structure mentioned above, two accounting systems were created for the payment of contributions that could be summarized as follows:

a. The first system, that we will call *traditional*, resulted from a scheme through which the ISS took the salary of the affiliate reported by the employer, placed it as indicated above in the corresponding category and, on the basis of the value of the Monthly Base Salary for said category paid, and billed the employer, the value of the contributions that should have been paid —by each worker and by the employer —to the Institute.

b. The second system is the well known system of *Self-Payment of Contributions,* called "ALA", through which the payment of monthly contributions was made directly by the employer, who assumed the obligation to liquidate and pay for the corresponding contributions adhering to the categories system described above.

The Monthly Base Salary for the payment of pensions was obtained by multiplying by a 4.33 factor, one hundredth of the sum of the weekly salaries on which basis the worker quoted during the last one hundred (100) weeks.[11]

The pensioners had the right to increments for dependent persons equivalent to 7% (for children) and 14% (for spouse or permanent companion with economic dependence) of the minimum pension.

During the effectiveness of Agreement 049 of 1990 approved by article 1st of decree 758 of the same year, old age, disability and survivors pensions in this regime were conditioned and integrated as follows:

Old Age

Eligibility: a) Sixty (60) or more years of age in the case of a man or fifty five (55) or more years of age in the case of a woman,

[10] By April 1994 and according to Agreement 014 of 1993 of the National Council for Mandatory Social Securities, the maximum contribution category was number 69 that corresponded to salary incomes equal to or higher than $1'680,539.99 to which a Monthly Base Salary of $1'644.810.00 was assigned.

[11] The 4.33 factor resulted from dividing the number of weeks in one year by the number of months. (Articles 12 and 20 of Agreement 049/90).

and b) A minimum of five hundred (500) quotation weeks paid during the last twenty (20) years prior to reaching the minimum ages, or having accredited a number of one thousand (1,000) quotation weeks, defrayed at any time.

Integration: With a basic amount equal to forty five percent (45%) of the monthly base salary, and b) with increments equivalent to three percent (3%) of the same monthly base salary for every fifty (50) quotation weeks that the insured had accredited after the first five hundred (500) quotation weeks.

The total value of the pension may not exceed 90% of the monthly base salary nor be lower than the monthly legal minimum salary or higher than fifteen times this same salary.

Disability of a common origin[12]

Eligibility. Declaration of Total or Absolute Permanent Disability or of Serious Disability and having accredited 150 quotation weeks within the six (6) years prior to the date of the state of disability, or three hundred (300) quotation weeks at any time prior to the declaration of disability.

Integration[13]: In the event of total permanent disability: a) with a basic amount equal to forty five percent (45%) of the same monthly base salary and b) with increments equivalent to three percent (3%) of the same monthly base salary for every fifty (50) quotation weeks accredited by the insured after the first five hundred (500) quotation weeks. In the event of absolute permanent disability: a) with a basic amount equal to fifty one percent (51%) of the monthly base salary, and b) with increments equivalent to three percent (3%) of the same monthly base salary for every fifty (50) quotation weeks accredited by the insured after the first five hundred (500) quotation weeks, and for Serious Disability: a) with a basic amount equal to fifty four percent (57%) (sic) of the monthly base salary, and b) with increments equivalent to three percent (3%) of the same monthly base salary for every fifty (50) quotation weeks accredited by the insured after the first five hundred (500) quotation weeks.

Death of a common origin[14]

Eligibility. Death of an old age or disability pensioner, with right to anyone of these pensions. The death of the pensioner produces the substitution of the pension enjoyed or to which the pensioner was entitled in favor of the members of his family group.

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[12] An affiliate who had lost 50% or more of his labor capacity was considered as invalid. The criteria for the integral declaration of disability were the following: Total Permanent Disability (loss of capacity with respect to the customary trade or profession); Absolute Permanent Disability (loss of capacity to carry out any kind of remunerated work); and Serious Disability (loss of capacity by virtue of which the constant assistance of another person is required for the essential acts of life.

[13] The total value of the pension could not be higher than 90% of the Monthly Base Salary nor lower than the monthly legal minimum salary nor higher than fifteen times this same salary.

[14] Under this regime both the disability or old age pensioner who died and the affiliate who died from non professional risks have the right to pension. The professional risk insurance covers death caused by professional risks.

The deceased affiliate must have accumulated the same number and density of quotations required for a disability pension.

*Beneficiaries.*The family group of the death pensioner or affiliate with a right to the survivors pension was integrated by the Spouse and in his or her absence[15] the permanent companion, who would receive the pension on a lifelong basis; b) the legitimate children younger than 18 years and the disabled children of any age, provided they depended economically[16] and while said conditions subsisted.

In the absence of the above and in a lifelong manner, the parents of the insured, with economic dependence on the pensioner; in the absence of the latter, the pension corresponded to disabled brothers or sisters with economic dependence as long as the disability subsisted.

The pension was distributed among the beneficiaries as follows: 50% for the spouse or companion with dependency rights and 50% for the children in equal parts; in the absence of one or the other or, when the rights of one or the other were extinguished, 100% for the other with the right for increase in the respective group; in the absence of those above mentioned, 100% for parents with dependency rights; in the absence of the latter, 100% for disabled brothers or sisters with dependency rights. The right to an increase of the first group of beneficiaries due to extinction of the right of the other beneficiaries of the same group, was authorized; however, in the event of extinction of the rights of the beneficiaries of the respective group, the pension was extinguished and did not apply to other groups.

Pensions were payable when the regulatory requisites were met, and were recognized in a retroactive manner as from the date of the end of the affiliation in the case of old age and, in the case of disability or death of the pensioner or insured, payment was made in a retroactive manner, as from the verification of the event. If the requisites for the right to the pension had not been met, the system returned the contributions through the substitutive indemnities [17].

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[15] The absence of a spouse was understood as: due to actual or presumed death, nullity of civil or ecclesiastic marriage, divorce from a civil marriage, legal and definite separation of bodies and properties.

[16] An economic dependency of the affiliate was considered to exist when the beneficiaries lacked income or received an income lower than the monthly legal minimum salary in force.

[17] According to Article 14 of Agreement 049 of 1990, approved by Article 1st of Decree 0758 of the same year, the old age pension substitutive indemnity was calculated as follows: "The persons who, having reached the minimum ages required to become entitled to the old age pension, retired definitely from activities subject to social security and who had not accredited the minimum number of quotation weeks required to become entitled to that right, would perceive in substitution thereof, for every twenty five (25) quotation weeks of accredited, an indemnity equivalent to one monthly payment of the total permanent disability pension that would have applied to them in the event that they would have become disabled at the time of reaching the respective age. The requisite to grant this indemnity was that no more than ten (10) years had elapsed between the period to which the last quotation accredited corresponded and the date on which the ages required to acquire the right to an old age pension were reached, and that the insured had accredited no less than one hundred (100) quotation weeks. Paragraph. The persons who, at any time received the indemnity referred to in this article, could not be registered again in the old age, disability and death insurance. The weeks taken into account for the purposes of the indemnity, will not be computed for the retirement pension as a result of contributions provided for by Law 71 of 1988".

We must highlight the detonative aspects of the crisis of the system in this stage, as follows:

With respect to financing, the system was created to be supported in a tripartite manner with contributions from the State, from the employers and from the workers. The State did not comply with its payment obligation and in 1997 produced a reform that excluded it in a definite manner.

The system provided a periodical adjustment of the quotation rates that was not complied with in its entirety, with the result that the adjustment applied was insufficient and the behavior was as follows: from January 1967 through October 1985 (4.5%); from November 1985 through September 1992 (6.5%) and from October 1992 through March 1994 (8%).

The system covered only dependent workers and among them there was a high index of evasion which caused that the coverage was minimum.

With respect to the basis for the payment of contributions and for the payment of the pension, those affiliated to the regime opted to pay contributions during their entire labor life, for less than the mandatory values and only during the last 100 weeks (a period that was considered as the base income for payment of the benefit) and increased to a maximum their basis for contribution and the respective quotations, generating an economic unbalance and affecting the resources proceeding from the common fund, which resulted inequitable with the system itself.

With respect to the conditions for eligibility to the pension, the possibility of granting lifelong pensions with only 10 quotation years was not equitable nor coherent.

2.1.4. The employers system in the National Public Sector[18]

Subsequent to Law 6th of 1945, Decree 3135 of 1968 was issued which authorized in its article 27 the conditions for eligibility to the retirement pension in favor of public servants (public employees and official workers), a pension exclusively for the account of the State as an employer, providing as conditions the age of 50 years for women and 55 years for men, and 20 years at the service of the State, to obtain a pension of 75% of the average salary of the last year of services.

In 1985 a new norm on pensions was issued in Law 33, that established for men and women the age of fifty five (55) years, and maintained for women the benefit of the age of the previous regime under paragraph 2nd of its article 1st, by providing:

> "ART. 1st.- The public servant who serves or has served during twenty (20) continued or discontinued years and reaches the age of fifty five (55) years, will have the right to be paid by the respective welfare fund a life monthly retirement pension equivalent to seventy five percent (75%) of the average salary that served as a basis for the contributions during the last year of service."

This period ends with the enforcement of Law 71 of 1988, a norm of general application, which **provides for the first time, the accumulation with pension purposes**, of years of service rendered in the public sector and in the private sector

[18] The special regimes and those of a local application, whose variety and complexity merit a special study that exceeds the scope of this paper are excluded from this presentation.

for eligibility to the then called Retirement Pension from Contributions.

We point out as additional and common benefits of pensions, their automatic adjustment in an equal and simultaneous proportion to the increment applied to the Monthly Minimum Legal Salary (SMLMV) for each annuity, and monthly allowance 13 payable to all pensioners in the month of December of each year, in an amount equal to one monthly payment of their pension.

As detonators of the crisis in this stage and system we could underline: a) the system did not contemplate in all instances the payment of contributions on the part of workers; b) the burden of the financing of pensions was assigned to the State which did not make the necessary arrangements, generating a budgetary deficit that still persists at present.

Generally, and in a reiterated manner, all the legislative changes implemented in Colombia, both in the public and in the private sector, historically guaranteed the respect to the rights acquired and a transition pensions regime.

2.2. Recent Normative

2.2.1 The Constitutional Reform of 1991

In Colombia, like in several of the Latin American countries, by the end of the nineties the start of a crisis of the fringe benefits coverage systems and, specifically, of the pensions system, was recognized as a reality.

The coincidental aspects are identified with: the low coverage, the multiplicity of regimes, the deficit in financing, and the errors in the administration.

A precedent to be considered is the Constitutional Reform of 1991 which was the source of the conception of Colombia as a Social State Ruled by the Law; new values and fundamental principles were established that, in our opinion, ratified the international commitment on the matter of social security.

The Honorable Colombian Constitutional Court expressed in this respect

> "(…) The classic conception of the Government Ruled by the Law does not disappear but becomes harmonized with its social condition, by finding the point of fusion in the dignity of the human being. Thus, to the juridical security provided by legality is added the effectiveness of the human rights derived from the concept of the social. The respect to human rights, on the one hand, and the observance of certain principles that guide the acts of the State on the other hand, constitute the practical consequences of the Social State Ruled by the Law (…)"[19]

> "(…) The Social State Ruled by the Law is centered in the protection of the human being attending to its actual conditions inside society and not to the abstract individual(…)"[20]

> "(…) The finality of the Social State Ruled by the Law has, as the basis for its final interpretation, the human being,

[19] Colombian Constitutional Court. Constitutionality Verdict C-449 of 1992. Eduardo Cifuentes Muñoz, M.P.

[20] Colombian Constitutional Court. Constitutionality Verdict C-587 of 1992. Eduardo Cifuentes Muñoz, M. P.

seen in a specific manner, that is, with a content, thus finding material individuals and not abstract beings. The reason for existence is to construct an ideal means in which associates may extend their vital potentials (…)"[21]

The international commitment acquired by Colombia by subscribing the International Pact on Economic, Social and Cultural Rights, was resumed in:[22]

"… adopting the necessary measures, "(…) especially economic and technical measures, up to the maximum of available resources, to progressively attain, through all appropriate means, (…) especially the adoption of legislative measures, the full effectiveness of the rights(…)[23].

Social Security is identified in this new constitutional scheme with a twofold juridical nature and is found in the provisions of article 48 of the Constitution, thus;

"Social Security is a **public service of a mandatory nature** that will be rendered under the direction, coordination and control of the State, subject to the principles of efficiency, universality and solidarity, in the terms established by the law.

All inhabitants are guaranteed the **non-renounceable right** to social security.

The State, with the participation of individuals, will progressively increase the coverage of social security that will include the rendering of services in the manner determined by the law. Social Security may be furnished by public and private entities, according to the law.

The resources of social security institutions may not be destined nor used for purposes other that social security itself.

The law will define the means so that the resources destined to pensions will maintain their constant purchasing power."

We must point out that article 93 of the Colombian Constitutional Charter confers to international treaties on human rights the nature of a prevailing norm in the internal law, because these treaties are in accordance with the constitutional order, and it recognizes their condition as an interpretation criterion in the search of the sense of the rights and duties approved in the Fundamental Charter[24].

2.2.2 The Integral Social Security System: Law 100 of 1993

Within this context and under the directives of a government of a neo-liberal orientation, the reform contained in Law 100 of 1993 is introduced, creating the

[21] Colombian Constitutional Court. Tutelage Verdict T-124 of 1993. . Eduardo Cifuentes Muñoz, M. P.
[22] Both the International Pact on Economic, Social and Cultural Rights, and the additional Protocol of San Salvador, were ratified by Colombia, the former with law 74 of 1976 and the latter by law 389 of 1996.
[23] International Pact on Economic, Social and Cultural Rights. Article 2.
[24] Colombian Constitutional Court. Tutelage Verdict T-441 of 1992. Alejandro Martinez Caballero, M. P.

Integral Social Security System[25] and within this system the General Pensions Regime (RGP)[26] of which we highlight the following conditions and characteristics:

It develops three principles which are additional to the three constitutional principles, with the following results:

Efficiency. Adequate utilization of the financial, technical and administrative resources, to achieve adequate, opportune and sufficient benefits.

Universality. For all persons without discrimination.

Solidarity. Mutual generational assistance and according to income.

Integrality. Coverage of all contingencies that affect health, economic capacity and in general the living conditions of the entire population.

Unity. Articulation of policies, institutions, regimes and fringe benefits to reach the ends of social security.

Participation. Intervention of community in the organization, control of the administration and supervision of the institutions and of the system.

By express resolution of the Law, the General Pensions Regime is applied to all the inhabitants of the national territory, with the exception of those provided for in article 279[27] of the same norm and respects rights, prerogatives, services, guaranties and benefits acquired under previous norms, Conventions, Agreements or Collective Pacts, for those who had met the requisites to have access to a pension, without detriment to the right to denounce[28] and the competence of the Arbitration courts to settle collective Labor conflicts.

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[25] Defined in Article 1st of Law 100 of 1993, in the following terms: The Integral Social Security System has as a purpose to guarantee the non-renounceable rights of the individual and of the community to obtain a quality of life according to human dignity, by the protection of the contingencies that affect it. The system provides for the obligations of the State, of society and of the institutions and for the resources destined to guarantee the coverage of fringe benefits of an economic nature and of the fringe benefits relative to health and complementary services, which are the subject of this law, or other fringe benefits to be incorporated normatively in the future.

[26] According to the provisions of article 10th of Law 100 of 1993, the General Pensions Systems has as purpose to guarantee to the population protection against the contingencies derived from old age, disability and death, by means of the recognition of the pensions and fringe benefits provided for in this law, and to tend to the progressive increase in the coverage of the segments of population not covered by a pensions system.

[27] The express exceptions contained in this provision were: the members of the Armed Forces and of the National Police, the personnel covered by Decree-Law 1214 of 1990, with the exception of those who affiliated as from the effectiveness of the law, the non-remunerated members of public corporations, the affiliates to the national fund for social fringe benefits of teachers, the workers of enterprises that, at the time of the enforcement of the law, were part of a preventive and mandatory concordat in which special systems or procedures for the protection of pensions had been agreed upon, and until the respective concordat continues in effect. Public servants of the Colombian petroleum company, ECOPETROL and its pensioners.

[28] Subject to the interpretation of this term, we set forth that according to Colombian legislation, the denounce is the juridical act through which anyone of the parties to a collective agreement expresses to the other its intention not to keep it in effect in the terms agreed upon; this action must be performed within 60 days before expiration, through the Social Protection Ministry.

According to the provisions of article 151, this regime entered into effect as follows:

In the private sector, on April 1 1994, in the public sector no later[29] than June 30 1955. The purpose of the regime was to guarantee the recognition of pensions and fringe benefits in the old age, disability and death contingencies. The following characteristics of the regime are to be highlighted: mandatory afiliation[30], co-existence of two regimes that are excludable of each other (Solidary Average Premium Regime with defined Fringe Benefit (RSMP) and Individual Savings with Solidarity Regime) (RAIS), free election of the affiliation regime, mobility in the system, that is, the right to transfer from one regime to another every three years.

The eligibility to a pension took into account the number of weeks quoted under anyone of the two regimes of the general pensions system; the years of service as remunerated public servants, including the time served in excepted regimes; the years of service as workers linked to employers that prior to the effectiveness of Law 100 of 1993 were responsible for the recognition and payment of the pension, provided the labor relationship was in effect or had been initiated after the effectiveness of Law 100 of 1993, and the number of weeks quoted to welfare funds of the private sector that prior to Law 100 of 1993 were responsible for the recognition and payment of the pension.

The following are other characteristics of this regime: it recognizes pensions and fringe benefits; it requires mandatory contribution during the effectiveness of the labor relationship, permitting voluntary contributions in addition to legal contributions; it offers subsidies through the solidarity fund; its resources are destined in an exclusive manner to payment of legal fringe benefits, and the contributions do not belong to the Nation nor to the administering entity but are the property of the affiliates, that is, the State is responsible for the direction, coordination, control and guaranty of the resources contributed, supervising the destination, custody and administration thereof. The regime permits administrators to charge reasonable administration expenses. Finally, in the event that the affiliates do not meet the requisites that entitle them to the pension, it provides the return of contributions through substitutive indemnities or return of balances.

This new pensions regime within the Integral Social Security System, modifies some of the conditions existing in the previous regime, as regards the Base Quotation Income (IBC)[31] and the Base

[29] Pursuant to the provisions of Law 100, each territorial entity was free to determine the date of effectiveness of the General Pensions Regime, the deadline being, in any event, June 30 1995.

[30] The mandatory affiliation was imposed on workers linked by a work contract and to Public Servants (public employees and official workers). By exception and in a voluntary manner, affiliation was allowed also to independent workers and to any other natural persons residing in the country that were not mandatory affiliates (not expressly excluded), as well as to foreigners who remained in the country under a permanent work contract and were not covered by any regime of their country of origin or of any other country.

[31] The IBC cannot be lower than the Monthly Legal Minimum Salary in Effect (SMLMV) for each annuity, nor higher (during the initial stage) to 20 SMLMV.

Liquidation Income of Fringe Benefits (IBL)[32]. The adjustment factor in the IBC lead to payment of contributions on the basis of the actual income of the affiliates, tending to the construction of pensions that were proportional to the income of the affiliates, and in the IBL its adjustment factor leads to the calculation of fringe benefits on the basis of the income of a longer period proportional to the labor trajectory, considering for the first time the indexation of the base for the payment of pensions. This last measure was aimed at solving the inequity derived from the common practice, mentioned above, of eluding the payment of contributions during the entire labor life and the inordinate increment of the base of the contribution in the final period that was used as the basis for the calculation of the fringe benefit

Another solution that was incorporated to this new regime, for the problems that generated the crisis, consisted in the adjustment of quotation rates in the following terms: …. From April 1 through December 31 1994 (11.5% of the IBC); from January 1 through December 31 1995 (12.5% of the IBC), and as from January 1 1996 the rate of (13.5%) which remained unchanged until the reform of the year 2003. As an expression of the principle of solidarity, affiliates with income higher than 4 SMLMV were imposed the obligation to quote an additional 1% destined to the pensions solidarity fund.

After the reform, workers in Colombia could choose, in order to become affiliated and construct the pension protection, between these two regimes: the *Solidary Average premium Regime with a Defined Fringe Benefit (RSPM*) and the *Individual Savings with Solidarity Regime (RAIS).* We will point out below the more important features of each one of these regimes.

Solidary Average Premium Regime with a Defined Fringe Benefit (RSPM)

Definition. According to the legal definition, this is a solidary regime with a defined fringe benefit in which the contributions of the affiliates and their yield, constitute a common fund of a public nature that guaranties payment of the fringe benefits of those who have the capacity as pensioners in each effectiveness, the respective administration expense and the constitution of reserves according to the provisions of the law and in which the State guaranties the payment of the benefits to which the affiliates are entitled who, as from the time of the enforcement of the law, are aware of the fringe benefit that has been defined.

Old Age Pension

Eligibility. The amendment to the requisites as a whole consisted in increasing the minimum number of weeks required to be eligible to the pension and the basic percentage of the amount, as well as in reducing the percentage of the increments to the pension in the event of old age. The minimum of quotation weeks required was increased to one thousand (1000).

[32] The IBL was defined as the average of the salaries on which the affiliate quoted during the ten (10) years prior to the recognition of the pension up-dated annually with the consumers Price Index (IPC) certified by the National Statistics Department (DANE). If the up-dated average of the entire labor life was higher than the previous average, the affiliate could opt for the former, provided he had quoted a minimum of 1250 weeks.

Integration. With a basic amount of 65% of the IBL for the first 1.000 quotation weeks and, in a complementary manner, by virtue of the weeks additional to the first 1.000 weeks, the increments were determined as follows: 2% of the IBL (up to 73% of the IBL) for every 50 additional weeks from 1001 to 1200.3% of the IBL (up to 85% of the IBL) for every 50 additional weeks from 1201 to 1400. The minimum pension was maintained at one SMLMV and the maximum ceiling was increased to the equivalent of 20 SMLMV.

Substitutive Indemnity. In the event in which the affiliate reaches the required are but does not have the minimum number of weeks required for the pension in the respective year and declares that he is unable to continue quoting, the system will recognize for him an indemnity substituting the old age pension, the amount of which, according to the amendment introduced by the new law, will be equivalent to a weekly average Base Liquidation Salary, multiplied by the number of weeks quoted (throughout his entire labor life). The weighted average of the percentages on which the affiliate has quoted during his entire labor life will be applied to the result thus obtained.[33]

The transition regime of the old age average premium pension

Definition. The transition regimes constitute an exception to the general principle of immediate effectiveness that implies the application of the law in time and according to which the norms apply since the date of its enforcement and up to its annulment —express or tacit— by a subsequent law. The transition regimes seek the total or partial maintenance in the juridical ordinance of the annulled or amended norm, via the phenomenon of the ultra activity permitting its preferential application vis-à-vis the new norm.

Generally, the intention is to protect certain sectors that at the time of enforcement of the new order were close to meeting the requisites necessary to acquire a given right and that are more demanding in the new regime.

Then, by virtue of this reasoning and due to the particular conditions of proximity of the right of the persons benefited, they will be applied preferably the previous norm that was annulled for the rest of the social group.

Historically in Colombia, the existence and application of transition regimes has frequently occurred on the matter of pensions for the old age risk, in spite of the fact that they are not acquired rights but legitimate expectancies that merit legal protection.

In this respect, our Constitutional Court in a pronouncement contained in verdict C – 789 of 2002, provided:

> "The creation of a transition regime constitutes a protection mechanism to prevent that the changes produced by a legislative transit will inordinately affect those who, although not having acquired the right to a pension, because they have not met the requisites for this purpose, genuinely expect to acquire that right because at the time of the legislative transit they are close to meeting the requisites necessary to be eligible for a pension."

[33] The same rule and the same conditions apply in the event that the requisites for granting the common origin disability and death pensions have not been met.

The General Pensions Regime, structured in its article 36 a transition regime under the following conditions:

> "Art. 36. The age required to have access to the old age pension, will continue to be fifty five (55) years for women and sixty (60) for men, up to the year 2014, on which date the age will be increased by two years, that is, 57 years for women and 62 for men.
>
> The age required to have access to the old age pension, the years of service or the number of quotation weeks, and the amount of the old age pension of persons who at the time of the enforcement of the system have thirty five (35) or more years of age, in the case of women, or forty (40) or more years of age, in the case of men, or fifteen (15) or more years of services quoted, will be that established in the previous regime to which they were affiliated. The other conditions and requisites applicable to these persons in order to have access to the old age pension, will be governed by the provisions contained in this law.
>
> The income required for payment of the old age pension of the persons referred to in the preceding paragraph who are lacking less than ten (10) years to acquire the right, will be the average of their earnings during the time still required for this purpose, or the amounts quoted during the entire time if these amounts were higher, up-dated annually on the basis of the consumers price index, according to certification issued by the DANE. **However, if the time still required were equal to or shorter than two (2) years at the start of the effectiveness of this law, the base income for payment of the pension will be the average of the earnings of the two (2) last years for workers of the private sector and of one year for public servants.**[34]
>
> The provisions of this article for persons who at the time of enforcement of the regime have thirty five (35) or more years of age, in the case of women, or forty (40) or more years of age, in the case of men men, will not apply when these persons voluntarily choose the individual savings with solidarity regime, in which event they will be subject to all the conditions provided for in said regime.
>
> **It will not apply either to those who having chosen the individual savings with solidarity regime should decide to change to the average premium regime with defined fringe benefit.**[35]
>
> Those who, as of the date of effectiveness of this law, had met the requisites necessary to have access to the retirement or old age pension, pursuant to previous favorable norms, although no recognition had been granted to them, will be entitled, by virtue of the rights acquired, to be recognized and paid the pension in the favorableness conditions in effect at the time on which said requisites were met.

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[34] The segment of the text in boldface was declared applicable by the Constitutional Court, in Verdict C-168 of 1995.

[35] This part of the text in boldface was studied with respect to its constitutionality and declared applicable as conditioned according to Verdict C-789 of 2002. Latter on in this paper the consideration sustaining such decision will be analyzed.

> PAR. For the purposes of recognition of the old age pension referred to in the first (1st) paragraph of this article, consideration will be given to the sum of the weeks quoted prior to the effectiveness of this law, to the Social Securities Institute or to the social security funds or entities of the public or private sector, or the years of service as public servants, regardless of the number of weeks quoted or the years of service."

The above allows us to determine that, the requisite necessary to have access to the application of the transition regime provided for, is limited to having complied, as of April 1 1994 date of enforcement of the regime, with one of two possibilities: thirty five (35) or more years of age in the case of women or forty (40) or more years of age in the case of men, or 15 or more years of services quoted.

If anyone of the above assumption is true, the beneficiaries of the transition regime have the right to claim the old age pension, after having met the following conditions:

With respect to the age of the previous regime:

- In the public sector: 50 years in the case of women and 55 in the case of men, before Law 33/85; 55 years in the case of both women and men subsequent to Law 33/85.
- In the private sector - CST: women 50 and men 55.
- In the regime of the ISS, 55 women and 60 men.

As regards the years of service or quotation weeks of the previous regime:

- In the public sector: 20 years of service.
- In the private sector - CST: 20 years of service.
- In the regime of the ISS: Minimum 500 quotation weeks paid within the 20 years prior to reaching the minimum ages or 1000 quotation weeks paid at any time.

With respect to the amount of the previous regime, understanding as such the percentage applied to the base liquidation salary to obtain the pension:

- In the public sector: 75%
- In the private sector . CTS: 75%
- In the regime of the ISS: Minimum 45%, maximum 90%

Regarding the maximum ceiling, understood as a value higher than the pension monthly allowance by the application of the amount determined before: no less than 20 Monthly Legal Minimum Salaries in Effect (SMLMV), except special regimes.

After having read this resolution it can be concluded that the base liquidation income (IBL) was not subject to guaranty under the previous norms but, on the contrary, a special (IBL) was created, applicable only to the beneficiaries of the regime who on April 1 1994 (private sector) needed less than ten years to acquire the right to the old age pension. It is evident that in the case of others, who needed 10 or more years to acquire the right, article 21 of Law 100 of 1993 applies.

From the normative point of view, as stated before, the same law, in its article 36 paragraphs 4th and 5th, established the situations that caused the loss of the benefits of the transition regime, in the following terms:

> "The provisions of this article for the persons who at the time of the enforcement of the regime have thirty five (35) years of age or more in the case of women or forty (40) or more years of

> age in the case of men, the regime will not be applicable when these persons voluntarily choose the individual savings with solidarity regime, in which case they will be subject to all the conditions provided for in that regime.
>
> It will not apply either to those who having chosen the individual savings with solidarity regime decide to change to the medium premium regime with defined fringe benefit".

As mentioned in the preceding paragraphs, these norms were subject to study with respect to constitutionality, having declared their applicability as conditioned in verdict C-789 of September 24 2002, whose considerations and effects will be subject to analysis later on.

In the verdict under mention, the Constitutional Court considered that on the matter of the general pensions system, the legislator has an ample margin to establish the conditions necessary to have access to the transition regime, so that, in principle, the affiliates to social security do not have a subjective right that will prevent a change in the future normative, when the causal fact has not been produced. However, the Honorable Court estimates that this ample authority cannot be exercised by the legislator in an arbitrary manner ignoring the right to social security, and that the age and quotation weeks must be in accordance with the social reality, the life expectancy, the mortality indexes, and the financial and demographic aspects, so that the persons will be allowed to enjoy the effective right to the pension, because these are limits imposed by the constitutional value of work and by the special protection to workers. In this sense it the Court maintained that:

> "By virtue of said protection, legislative transits must be reasonable and proportional and, therefore, **the subsequent law could not ignore the protection that has been granted to those who at the time of the enforcement of the pensions system had more than 15 years of work quoted.**

And the Court added that the persons who, on April 1 1994 had complied with this condition

> "…. Are not expressly excluded from the transition regime when changing to the individual savings with solidarity regime, pursuant to paragraph 4th and, obviously, those who were transferred to the average premium regime and subsequently returned to the individual savings regime, pursuant to paragraph 5th, are not excluded either.

The Court also set forth that for this contingent of affiliates, the automatic loss of benefits is contrary to the principle of proportionality, according to which the legislator cannot transform arbitrarily the legitimate expectations of the workers with respect to the conditions in which they expect to receive their pension, as a result of their work.

> "Therefore, it would be contrary to this principle of proportionality, and violatory of the constitutional recognition of work, that those who have reached 75% or more of the years of work necessary to have access to the pension at the time of enforcement of the pensions system, pursuant to article 151 of Law 100 of 1993 (April 1 1994), should end by losing the conditions in which they expected to receive their pension."

This is why the Court declared that the aforementioned paragraphs 4th and 5th are constitutional, provided it is clearly understood that they do not apply to persons who had 15 years of service quoted at the time of enforcement of the RGP, as

long as they returned to the RSPM, transferred to this regime what they had saved in the RAIS and that the resulting amount is not lower than the quotation in the event that they had remained in the Average Premium Regime.

According to the foregoing, it is concluded that the amendments introduced by Law 100 of 1993 to the Average Premium Pensions Regime with Defined Fringe Benefit, will not have an immediate practical application, because all the persons entitled to a pension within a short term are those covered by the Transition Regime, who will be recognized the old age benefit under the more favorable conditions of the previous Regime.

The Individual Savings with Solidarity Regime (RAIS)

Definition. In this system, the contributions of the affiliate constitute an individual pension savings account. The individual pension savings accounts constitute an autonomous patrimony which is the property of the affiliates, independently of the capital of the administrators (pension fund). The administrators must guarantee a minimum yield on individual savings and respect the legally established investment portfolios. On the other hand, this system permits voluntary quotations as additional values to the mandatory, periodical or occasional quotations destined to increase the balance of the account.

The amount of the disability, old age and death pensions in this case, depend on the contribution of the affiliates and employers, the bonus and financial yields and on the State subsidies if any.

One part of the quotation is used for capitalization, and another one for the payment of premiums, re-insurance (disability, survivors pension,) and insurance (counseling, life income) and one more for administration expenses.

Eligibility. The old age pension under this regime is applicable at the age chosen by the affiliate when the capital accumulated in the individual pension savings account permits him to obtain a monthly pension with a value higher than 110% of the SMLMV on the date of enforcement of Law 100/93 (December 23 1993) readjusted with the consumers price index, certified by the DANE on the date projected. The age limit to quote in this regime is 62 years for men and 60 years for women at which time, in the absence of sufficient capital to finance the pension, the minimum pension guaranty or the return of balances will operate.

Modalities of old age pension. This regime offers three possible modalities for this pension, that is: Immediate Life Rental. It is a direct and irrevocable contract with an insurance company for the payment of a monthly rental until the death of the affiliate and the payment of pensions to survivors. The rentals and pensions are uniform in terms of constant purchasing power and cannot be contracted for values lower than the minimum pension in effect at that moment. The administrator of the pensions is responsible for carrying out the negotiations and handling claims before the insurance company on behalf of the pensioner. Scheduled Retirement. In this modality, the pension is obtained directly from the administrating company with debit to the individual savings account and to the pension bonus if any. The value of the pension annuity in constant value units must be calculated each year by dividing the balance of the individual pension savings account by the capital necessary to finance a constant value pension for the affiliate and his beneficiaries until the scheduled retirement. The affiliate assumes the risk of the prolonged longevity if the capital is exhausted. Scheduled retirement with deferred life rental. A life

rental is contracted with an insurance company with the purpose of receiving monthly payments as from a given date. Sufficient money is maintained in the individual pension savings account to obtain from the pensions administrator a scheduled retirement. The pension may never be less than the minimum pension in force.

Minimum pension guaranty. Under this regime, the guarantee operates when the capital accumulated in the pension account is not sufficient to cover the minimum pension estimated. And it is subject to the requisite of 1.150 quotation weeks and an age of 57 years for women and 62 for men. In such event, a pension equivalent to one SMLMV is guaranteed.

Return of balances. In the event that the capital accumulated in the pension account is not sufficient to guarantee the payment of the minimum pension (110% of the indexed SMLMV of 1993) and if the affiliate does not have the 1.150 quotation weeks but has reached the age required (57 in the case of women and 62 in the case of men), the system guaranties the return of the amounts credited to the individual capitalization account.

With respect to the disability and death risks, the essential amendment consisted in the decrease of the number of quotation weeks and of the period within which they should have been accredited, thus trying to guarantee the accuracy of the system which was regulated as follows:

It is important to set forth that the regulation for these two fringe benefits is identical for the affiliates to anyone of the two regimes (RSPM and RAIS) of the General Pensions Regime.

Disability Pension

Definition. Law 100 of 1993 reproduces the above defining criterion to consider that a disabled person is that which for any reason whatsoever, of any origin, not provoked intentionally, would have lost 50% of more of his labor capacity. The state of disability must be qualified in conformity with the criteria established in the sole manual for the qualification of disability contained in Decree 917 of 1999, according to which the following basic concepts are defined:

> *"Labor Capacity:*
> The labor capacity of the individual is the abilities, skills aptitudes and/or potentials of a physical, mental and social kind that allow him to perform a customary work.
>
> *Customary Work:*
> Customary work is the trade, work or occupation performed by the individual with a labor capacity, training and/or technical or professional education, receiving a remuneration equivalent to a salary or rental on which he quotes to the Integral Social Security System.
>
> *Deficiency:*
> Understood as: All loss of or abnormality in a psychological, physiological or anatomic structure or function, that may be temporary or permanent, among which are included the existence or appearance of an anomaly, defect or loss produced on a member, organ, tissue or other structure of the human body, as well as on the mental function systems. It represents the exteriorization of a pathological state and reflects in principle disturbances at the level of the organ.
>
> *Disability:*
> Any restriction or lack of the capacity necessary to perform an activity in the manner or within the margin considered as normal for a human being, produced

by a deficiency, as is characterized by excesses which may be temporary or permanent, reversible or irreversible and progressive or regressive. It represents the objectivation of the deficiency and, hence, reflects alterations at the level of the person.

Invalidity:
Any disadvantageous situation for a given individual, **the consequence of a deficiency or disability** that limits or constrains him in the development of a role, which is normal in his case by virtue of his age, sex, social, cultural and occupational factors. It is characterized by the difference between performance and the expectations of the individual himself or of the group to which he belongs. It represents the socialization of the deficiency and his disability as it reflects the cultural, social, economic, environmental and occupational consequences suffered by the individual, the presence of which alter his surrounding.

According to the above, the distribution of percentages for the qualification of the loss of labor capacity, was determined in the following proportions: Deficiency 50%, Disability 20% and Invalidity 30%. When the deficiency was 0 it was not possible to qualify the disability or the invalidity.

Eligibility: The right to the pension will exist provided the following conditions are met: a) declaration of non professional disability and b) active affiliate with at least 26 quotation weeks at he time of occurring the disability; the inactive affiliate must accredit at least 26 quotation weeks within the year immediately prior to the time in which the disability occurs.

Integration: According to the degree of loss of capacity, the pension was integrated as follows: when the diminishment in the labor capacity is equal or higher than 50% and lower than 66%: with a basic amount equivalent to 45% of the base liquidation income (IBL) for the first 500 quotation weeks; additionally, 1.5% of said income for every fifty (50) quotation weeks accredited as from 501.

When the diminishment of the labor capacity is equal or higher than 66%: With a basic amount equivalent to 54% of the base liquidation income (IBL) for the first 800 quotation weeks; additionally, 2% of said income for every fifty (50) quotation weeks accredited as from 801. The pension so integrated may not be higher than 75% of the base liquidation income and in no event lower than the SMLMV.

As a detonator of the crisis in this aspect, we can point out the judicial decisions with respect to several cases of claim. In fact, our Supreme Court of Justice considered that this new provision lead to an inequitable treatment in events in which quotations had exceeded the number of weeks required for old age but at the moment of the occurrence of the disability the person was not affiliated to the regime; thus, in several verdicts the Court agreed to apply the previous norms in spite of the fact that these were situations consolidated during the effectiveness of this new norm, generating a jurisprudential transition regime and the consequent need for a legal regulation in this respect.

Substitutive Indemnity for the disability pension. If at the time of occurring the disability the affiliate did not have the density of quotations required for the disability pension, he is granted the right to receive, in substitution, an indemnity equivalent to that of the old age pension to which we have referred in a previous paragraph.

Common origin death pension

Eligibility. Like in the previous regime, it is granted in case of death of a pensioner and of death of an affiliate.

Integration. The pension for the survivors at the death of the pensioner will be equal to 100% of the pension the affiliate was enjoying. The right enjoyed or the eligibility right is transmitted.

The survivors pension resulting from the death of the affiliate was integrated by a basic amount equivalent to 45% of the base liquidation income (IBL) for the first 500 quotation weeks and, additionally, 2% of said income for every fifty (50) quotation weeks (501 and subsequent), without exceeding 75% of the base liquidation income.

Beneficiaries. We highlight in bold letters the amendments introduced by the new law. On a lifelong basis: **The spouse or permanent companion.** In the event of death of the pensioner: the spouse or companion **should accredit marital life at least since he met the requisites for the disability or old age pension and until the death of the affiliate, having lived together a minimum of 2 years before the death, unless the survivor had procreated one or more children with the affiliate.** The children younger than 18 years and those older than 18 and up to 25 with economic dependency on the affiliate at the time of death, and disabled due to an accredited students condition, and invalid children: while the disability subsists and they accredit economic dependency on the affiliate.

In the absence of a spouse, companion and children with rights, the beneficiaries are the parents of the affiliate if they accredit economic dependency. In the absence of a spouse, companion, children and parents: the beneficiaries are the invalid brothers or sisters if they depended economically on the affiliate.

Distribution of the survivors pension. This aspect does not suffer any essential modification; we set forth the special regulation in the event of absence of beneficiaries: In the absence of a spouse or permanent companion, children and parents with rights: In the average premium system the pension was for invalid brothers or sisters with rights in equal parts and, in the individual savings regime: the resources of the savings account became part of the decedent's estate.

We highlight as other relevant aspects of this reform: the annual increment of pensions, designating as adjustment parameter the Consumers Price Index certified by the DANE, for pensions in amounts higher than one SMLMV, while for pensions equal to the SMLMV, the rate will be the highest between the percentage in which the SMLMV is increased and the percentage of the Consumers Price Index certified by the DANE[36].

The payment of moratory interest in addition to the capital owed was authorized, in the event of overdue payment of the monthly pension. A monthly adjustment was provided for pensioners before April 1 1994, equivalent to the increment in the health quotation

[36] This conditioning is the result of the constitutionality study of the norm contained in Verdict C-387 of 1994 of the Constitutional Court, that decided that the norm is constitutional only under that understanding.

rate. An additional monthly allowance was created —called monthly payment 14— equivalent to a 30 days pension, limited to fifteen (15) times the monthly legal minimum salary in effect (SMLMV) and payable in the month of June of each year together with the monthly payment for the respective month.[37]

2.2.3 First reform to the Integral System Pensions Regime: Law 797 of 2003

The essential fundamental that inspired this legislative reform, was to make the requisites for the construction of the old age, disability and survivors pension more exacting, in addition to the reduction of the amounts of these pensions by virtue of the future financial viability of the pensions regime, especially with respect to the average premium solidary regime with defined fringe benefit.

In the case of the normative change, we point out the increment in the quotation rate as from the year 2004; the increment in the number of weeks required and the density of quotations necessary to have access to the right to a pension, as from the year 2005; the increment in the age as from the year 2014 and, finally, the notorious disadvantage due to the decrease in the amount and ceiling of the maximum pension, the confirmation of a fair cause for retirement from service, together with the possibility to review and revoke the pensions recognized in an irregular manner. Finally, the intent to eliminate the pension transition regime for the average premium (RSPM).

We present below the relevant aspects of the modifications introduced in the fringe benefits of the Regime by this law.

As regards the requisites for eligibility to the old age pension, the minimum number of weeks is maintained at 1.000 up to December 31 2004. As from January 1 2005, they are increased by 50 weeks and as from January 1 2006 and for each annuity, by 25 weeks, until a total of 1.300 weeks is reached in 2015.

2004	1000	2011	1200
2005	1050	2012	1225
2006	1075	2013	1250
2007	1100	2014	1275
2008	1125	2015	1300
2009	1150		
2010	1175		

Age is maintained at 55 years for women and 60 years for men, until December 31 2013. As from January 1 2004, it will be increased to 62 years for men and 57 for women.

With respect to the amount, the new law provided the decrease in the initial amount of the pension, and its calculation in a proportion opposite to the IBL (the higher the income the lower the initial amount, and the lower the income the higher initial

[37] This additional monthly allowance was created by article 142 of Law 100 of 1993, for a specific group of persons. The present retirement, disability, old age pensioners and survivors, of the public, official and semiofficial sectors, pensioners of all kinds in the private sector and of the Social Securities Institute, as well as retirees and pensioners of the Military Forces and of the National Police, whose pensions had been granted and recognized before January 1 1998"; however, the Constitutional Court declared as inapplicable the expressions that in its opinion authorized an unjustified discrimination, and extended this benefit to all pensioners. (Verdict C-409, Sept. 15/94. Hernando Herrera Vergara, M.P.).

amount), with a higher minimum and a lower maximum than in the previous regime.

To calculate the amount of the pension, factor R = % is created which will be applied to the IBL and is calculated as follows: R = 65.5%- (0-5 X number of SMLMV).

For example, R = IBL = 2 SMLMV, then, R = 65.5% . (0.5 x 2) = 64.5%.

We present below the chart of the basic amount of the pension since January 1 2004, calculated on the basis of factor R explained above:

1 SMLMV.....65% IBL
2 SMLMV.....64.5% IBL
3 SMLMV.....64% IBL
4 SMLMV .....63.5% IBL
5 SMLMV.....63% IBL
6 SMLMV .....62.5% IBL
7 SMLMV.....62% IBL
8 SMLMV.....61.5% IBL
9 SMLMV.....61% IBL
10 SMLMV .....60.5% IBL
11 SMLMV.....60% IBL
12 SMLMV.....59.5% IBL
13 SMLMV.....59% IBL
14 SMLMV.....58.5% IBL
15 SMLMV.....58% IBL
16 SMLMV.....57.5% IBL
17 SMLMV.....57% IBL
18 SMLMV.....56.5% IBL
19 SMLMV.....56% IBL
20 SMLMV .....55.5% IBL
21 SMLMV .....55% IBL

The increments and the maximum ceiling of the old age pension were left, as from January 1 2005, as follows: An additional 1.5% of the IBL for every 50 weeks in addition to the minimum number of weeks required each year. With a maximum amount of between 80% and 70.5% of the IBL, decreasing by virtue of the quotation income. It cannot be lower than one SMLMV nor higher than 25 SMLMV.

To finance the pension, the following will be taken into consideration: a) the number of weeks quoted in anyone of the regimes; b) the years of service as public servants including excepted regimes; c) the years of service with private employers who were responsible for the recognition and payment of the pension, provided the labor relationship continues or that it started after the enforcement of Law 100/93; e) **the years of service with employers that due to omission failed to affiliate (pension title)**, and f) the number of weeks quoted[38] to welfare funds of the private sector that were responsible for the recognition and payment of the pension.

Within the frame of this regime, two modalities of old age pensions with special requisites are created, i.e.: For physical psychical or sensorial disabled[39] and for a working mother with an invalid child[40], because these persons are vulnerable and therefore subject to special protection.

Another relevant aspect of this reform is the confirmation of fair cause for the termination of the labor relationship. This

[38] A week quoted is the period equivalent to seven (7) calendar days.

[39] Payable when the following conditions have been met: loss of labor capacity higher than 50%, 55 years of age, 1.000 quotation weeks or more, irrespective of the year in which the pension starts.

[40] Special pension, at any age, provided the affiliate has quoted the minimum required for the respective annuity. It will be paid while the invalidity state of the child prevails and he depends economically on the mother.

does not constitute a novelty for the private sector nor for the official workers sector, because said provision already existed in preceding norms, although formulated under different conditions. Then, the new law determines that the compliance with the requisites necessary for the right to the minimum pension will be a fair reason to put an end to the labor contract or to the legal or regulatory relationship, setting forth that once these requisites have been met and if the worker does not request the recognition of the fringe benefit, the employer is authorized to do so after 30 days from that date.

In contrast with this modification, there is the true fact that freedom to continue linked to the system exists, without limitation, in the regime in force up to April 1 1994, and after this regime, the freedom to remain in the system up to five more years after having met the minimum requisites with the intention of improving the amount of the pension. This new provision, if applied, without any consideration whatsoever, will lead to the eligibility to minimum pensions (without possible increments). In any event, it should be pointed out that since this is an act subject to the will of the employer, this fair cause cannot be the applied automatically and the workers of the private or public sector may remain linked to the system receiving simultaneously a salary and a pension, as they are not incompatible, because the money with which these pensions are paid are not part of the public treasury since they are auxiliary fiscal contributions.

This norm was studied by the Constitutional Court, who declared it applicable under the condition (Verdict C-1037 of November 5 2003) that the relationship may not be considered terminated without the notification of the inclusion in the payroll on the part of the corresponding administrator.

Another outstanding modification of this reform is the establishment of a term no longer than four months as from the presentation of the application with the documents demonstrating the right, for the administrating entity to recognize the fringe benefit.

With respect to the intention to eliminate the Transition Regime for the Average Premium Old Age Pension (RSPM), this law dealt with this matter in its article 18, by virtue of which it modified paragraph 2nd and paragraph 5th of article 36 of Law 100 of 1993 and added paragraph 2nd which we transcribe below in its pertinent part:

> **"The age required to have access to the old age pension** of the persons who at the time of the enforcement of the system have thirty five (35) years of age or more in the case of women or forty (40) years of age or more in the case of men, or fifteen (15) or more years of services quoted, will be that established in the previous regime in which they are affiliated.**The other conditions, requisites and amount of the pension applicable to these prsons, according to the provisions of numeral 2nd of article 33 and article 34 of this law, will be governed by the provisions contained in this law".**
>
> "It will not be applicable either to those who, having chosen the individual savings with solidarity regime, decide to change to the average premium regime with defined fringe benefit, with the exception of those affiliates who on April 1 1994 had 15 or more years of services rendered or weeks quoted, in which case they are entitled to a pension under the previous regime after they have met the requisites necessary to have the right to the old age pension, provided they comply with the following requisites:

a) That the capital saved in their individual account is transferred to the common fund of a public nature of the ISS, in accordance with the norms provided for in Law 100 of 1993 and its regulatory decrees.

b) That the capital saved in the individual account, deducting the pension bonus, is not lower than the amount of the corresponding quotations in the event that they had remained in the average premium regime administered by the ISS.

For those who on April 1 1994 had 15 years of services rendered or weeks quoted and had transferred to the individual savings with solidarity regime, the amount of the old age pension will be calculated according to the provisions of Law 100 of 1993 for the individual savings with solidarity regime.

PAR. 2nd. For the purpose of this law, the rights acquired will be respected and integrally guaranteed in the case of those who now are pensioners under the retirement, old age, disability, substitution an survivors systems in the different orders, sectors and regimes, as well as in the case of those who have already met the requisites provided by the law to acquire the pension, but it has not been recognized for them».

In accordance with the foregoing, three conditions would exist for the preservation of the benefits of the Transition Regime for those who changed to the Individual Savings with Solidarity Regime and returned to the Average Premium Regime, that is: a) 15 or more years of services rendered or 15 or more years of weeks quoted as of April 1 1994; b) the transfer to the ISS of the capital saved in the RAIS in the individual account, and c) that the amount saved in the RAIS deducting the pension bonus, is not lower than the quotations required for that same period in the RSPM.

Other remarkable aspects of this reform are that it establishes a new limit for the transfer of regime, according to which, after the first year of effectiveness of Law 797, the affiliate may not change regimes when he needs ten or less years to reach the age that entitles him to the old age pension; modification that makes sense in the economic safety of the systems, which depends on the permanence of the affiliates, especially the last years prior to becoming entitled to the right.

Finally, Law 797 reiterated the protection of the rights acquired in its classic conception, that is, both for those who at the time of the enforcement had already been recognized the retirement or old age pension, and for those who had met the pertinent requisites but who had not been granted the pension, which does not constitute a novelty, due to the clear protection of constitutional article 58 on this matter.

The constitutional control of this law was established in verdict C – 1056 of November 11 2003, in which the Constitutional Court considered that the law was partially unconstitutional because the requisites established by the constitution for its integration had not been totally met; in this respect the Court stated:

"From the specific examination of each one of articles 11, 18, 21 and 23 of Law 797 of 2003 in the Congress of the Republic, which has been summarized in this Verdict and which is now being analyzed, it can be determined with absolute clarity, that by proposition approved in the assembly of December 18 2002, they were removed from the text of the bill of the Law without having voted with respect to their contents. (Minutes No. 18 of December 10 2002)".

In our opinion, since there are defects in its process of integration, the provision of article 18 produced no effect whatsoever; consequently, it did not modify nor revoke article 36 of Law 100 of 1993, which continued in effect.[41]

The pensions for disability and death of a common origin were regulated in this reform in a very similar manner and under the same criterion as explained below:

Common Origin Disability Pension

The new provision makes a distinction, without apparent reason, between disability caused by accident and that resulting from an illness. It is possible to appreciate the intention of the legislator aimed at demanding greater accuracy from the system and especially seeks the solution to the problems generated by the judicial decisions on the basis of the favoring criterion. The new regime was as follows:

Eligibility. The affiliate to the system who, according to the above considerations is declared invalid and accredits the following conditions, will be eligible for the disability pension: *Disability caused by illness* (50 quotation weeks during the last three years immediately prior to the structuring date, and perseverance in his quotations to the system during not less than 25% of the time elapsed between the date on which he reached 20 years of age and the date of the first qualification of the state of disability). B) Disability caused by accident (50 quotation weeks within the three years immediately preceding the fact that caused the disability). Those younger than 20 years of age only had to accredit 26 quotation weeks during the last year immediately preceding the fact causing his disability, or his declaration.

As commented before, the constitutional control of this norm was determined in Verdict C – 056 of November 11 2003, which declared it inapplicable due to defects in its form, and therefore, in our opinion, it had no effectiveness.

Common Origin Death Pension

Eligibility: The following persons will be entitled to the survivors pension: the members of the family group of the deceased old age or common risk disability pensioner, and the members of the family group of the deceased affiliate to the system; in this latter case, the affiliate must accredit 50 quotation weeks within the last three years immediately preceding the death and, besides: In the event of death caused by illness, if he is older than 20 years of age, perseverance in his quotations during twenty five percent (25%) of the time elapsed between the date on which he reached twenty years of age and the date of the death, and in the event of death caused by an accident, if he is older than 20 years perseverance in his quotations during twenty percent (20%) of the time elapsed between the date on which he reached twenty gears of age and the date of the decease.[42]

[41] Some sectors supporting this legal doctrine, with which we do not agree, consider that the norm produced effects since its enforcement and until the declaration of unconstitutionality.

[42] This norm was studied with respect to its constitutionality by our Constitutional Court which declared it applicable with the understanding that the requirement provided for death as a result of illness is 20% and not 25%. (Verdict C – 1094 of November 2003).

In order to solve the treatment that the Supreme Court of Justice considered to be inequitable (due to the requisites provided in the previous regime), this new law created a special pension in favor of the members of the family group of the affiliate who accredited quotations equal to the minimum number of weeks required in the average premium regime before his death, and who had not received a substitutive indemnity with respect to the old age pension nor the return of balances. The members of the family group of the affiliate will have the right to the survivors pension under the terms of this law, in an amount equivalent to 80% of that which would have applied in an old age pension.

The law also provided, without apparent reason, that if the cause of the death was a homicide, the provisions relative to accident would apply, and if the cause was suicide, the provisions relative to illness would apply, a regulation that was declared unconstitutional in Verdict C-1094 of November 19 2003.

One of the most important changes was the new inheritance regime which represented an important change with respect to the previous regime and pretended to adhere to the reality of the family organization of the country, as follows:

The following are beneficiaries of the survivors pension:

> "a) On a lifelong basis, the spouse or the permanent surviving companion, provided said beneficiary, on the date of the decease of the affiliate is 30 or more years old. In the event that the survivors pension is caused due to death of the pensioner, the spouse or the permanent surviving companion must accredit that he or she had been living a marital life with the affiliate until his death and had lived with the deceased no less than five (5) continuous years prior to his decease;
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> b) In a temporary manner, the spouse or the permanent surviving companion, provided said beneficiary, on the date of the decease of the affiliate, has less than 30 years of age and has not procreated children with the affiliate. The temporary pension will be paid as long as the beneficiary is alive and will have a maximum duration of 20 years. In this case, the beneficiary will have to quote in the system to obtain his own pension against that pension. Paragraph a) will apply If he or she had children with the affiliate.
>
> If an affiliate had a permanent companion with the right to receive part of the pension referred to in paragraphs a) and b) of this article if a previous undissolved conjugal association exists, the pension will be divided between the two beneficiaries them in proportion to the time of cohabitation with the deceased.
>
> In the event of simultaneous cohabitation during the last five years before the death of the affiliate, of the spouse and a permanent companion, the beneficiary of the survivors pension will be the spouse. If there is no simultaneous cohabitation and the conjugal link continues in effect, but there is a separation de facto, the permanent companion may claim a quota part of the amount provided for in paragraph a) in a percentage proportional to the time of cohabitation with the affiliate provided it was than the last five years prior to the death of the affiliate. The other quota part will belong to the spouse with whom the conjugal association exists and is in force;
>
> c) The children younger than 18 years; the children older than 18 years and up to the age of 25, unable to work by reason of their studies and if they depended economically on the affiliate at the time of his death, provided they duly

accredit their condition as students and meet the minimum academic conditions established by the Government; and invalid children if they depended economically on the affiliate, that is, if they have no additional income, while the invalidity conditions subsist. To determine that the disability exists, the criterion provided by article 38 of Law 100 of 1993 will apply;

d) In the absence of a spouse, permanent companion and children with rights, the parents of the affiliate will be the beneficiaries if they depended economically on the affiliate in a total and absolute manner.

e) In he absence of a spouse, permanent companion, parents and children with rights, the invalid brothers or systems of the affiliate will e the beneficiaries if they depended economically on the latter.

Paragraph. For the purposes of this article, it is necessary that the link between the parent, the child or the invalid brother or sister is that established in the Civil Code."

No modification was made with respect to the integration of the pension nor to its distribution.

Finally, the approval of actions and procedures for the review and annulment of pensions recognized in an irregular manner, incorporated to the national legislation in articles 19 and 20 of Law 797 of 2003 constitutes one of the most relevant aspects, aimed at the protection of the public monies and of social security.

According to the provisions of the first one of these regulations, the legal representatives of the institutions responsible for payment of the pensions must verify the compliance with the requisites and the legality of the documents that were used as the basis for the recognition of a pension payable by the public treasury, whenever they are reasons to assume that it was recognized in an undue manner; in case of confirmation, they must proceed to the direct annulment of the administrative act even without the consent of the person involved and present authentic copies to the competent authorities.[43]

The second regulation, provides the review of the judicial measures that at any time decreed or will decree a recognition that will impose on the public treasury or on funds of a public nature, the obligation to cover periodical sums of money or pensions of any kind; at the request of the Government through the Labor and Social Security Ministry, the Finance and Public Credit Ministry, the General Controller of the Republic or the Attorney General of the Nation the review of transaction or conciliation contracts judicially or extra-judicially legalized is also considered lawful.

2.2.4 Second reform to the Integral System Pension Regime: Law 860 of 2003.

The essential objective of the government when proposing to the Congress the bill of law with the new regulation, was to reestablish the normative contents of the

[43] The Constitutional Court expressed the need to respect the due process and the right to defense in these cases.

texts that had been declared unconstitutional, specifically the transition regime, and the modification to the disability pension. Therefore, the governmental proposal did nothing but reproduce almost in its entirety the wording of the previous proposal and thus Law 860 of December 26 2003 was issued, whose article 4th dealt with this matter, maintaining the initial conditions only until December 31 2007. As from January 1 2008 it would only respect the age provided for in the previous regime.

The constitutional control of this regulation was complied with in Verdict C – 754 of august 10 2004 and therein the Honorable Constitutional Court declared Article 4th of Law 860/03 inapplicable, both due to defects of procedure and with respect to its material contents, and set forth the effects of unconstitutionality since the enforcement of the law; hence, it had no effectiveness whatsoever.

With respect to the disability pension, the regulations of Law 797 of 2003 were essentially reproduced, adjusting them to the decision of the Constitutional Court aforementioned, that is, a 20% was established as factor of perseverance in the system in anyone of the two cases of disability; otherwise the previous norm was maintained.

With the interest of putting an end to the conflicts generated by the interpretation of the judges, a disability pension was created with special requisites to protect inactive affiliates with quotations equivalent to no less than 75% of the minimum number of weeks required for the old age pension. They are only required to accredit 25 quotation weeks within the last three years prior to the disability.

In this stage the following can be pointed out as detonators of the crisis: the ample scope of application of the transition regime for the old age pension; the maintenance of costly extra-legal special and excepted regimes, and the so called monthly allowance 14 explained before.

III. Latest proposals for reform

3.1. The Constitutional Referendum

As an alternative for a legal solution to the already detected economic deficit of the pensions system, and in view of the failure of the previous norms, the Government presented a decision of the primary constituent, an initiative for a constitutional referendum that on the matter of our concern and in a brief manner, contained measures such as: the limitation of the amount of public pensions to 25 SMLMV, leaving untouched the excepted and special regimes; a suspension of the increments in salaries and pensions of the official sector during two years, and the creation of a limitation of collective negotiations on pension matters.

The permanent article of the referendum was subject to a constitutionality study[44] according to which it was found to be adjusted to the constitution; however, this did not prosper because the article was not approved in the popular consultation.

3.2. The Legislative Act Project

The proposal of the national Government aimed at finding a solution to the problem of pensions in our country is at present in

[44] Constitutional Court, verdict C-551 of 2003. Eduardo Montealegre Lynett, M.P.

the course of discussion; the Finance and Social Protection Ministers submitted to the consideration of the Congress of the Republic a Legislative Act Project that has as an objective to add the norm contained in article 48 of the National Constitution.

During the review of this document, an agreement was produced (in an eighth debate) in the Congress of the Republic, whose official text has not been made known; however, as we consider it to be a qualified source we present parts of the information taken from the publication contained in this respect in the Web page of the Presidency of the Republic of Colombia[45], on Friday, June 17 2005.

It should be pointed out that, as indicated in the publication, the text approved by the Plenum of the Senate must be conciliated with the Chamber of representatives, because that institution proposed different points of view and the texts must be unified. The conciliators of the Senate and of the Chamber must reach an agreement with respect to the final articles of the project, prepare a new and definite text, publish it and bring it to the Plenum of each corporation for approval. This task must be completed before Monday, June 20 2005, date on which the legislative period ends, because since this is a reform to the Constitution, the project must be discussed only in ordinary sessions of Congress. If the legislative act project is not approved in time and form, the entire process will have to be brought up again in another Legislature, which implies a delay in the solution or the failure of the project.

According to the report referred to, the approval of the plenum of the congress is summarized as follows:

1. Monthly allowance 14 is eliminated under the law as from the enforcement of the legislative act for those who earn more than three minimum salaries and it is maintained only in favor of new pensioners earning 3 monthly minimum salaries or less but only up to the year 2011.

2. The ceiling of 25 monthly legal minimum salaries in effect for pensions applicable on the date of enforcement of the reform was approved under two conditions: first, that the ceiling will not be applied —that is, that it will be possible to continue paying more than 9 million and a half pesos of today— to those who have a minimum of 750 weeks quoted (15 years) and, second, that a minimum of half of these 750 weeks (that is 375) must have been quoted before July 31 2005.

3. Privileged pension regimes are eliminated, except those applied to the members of the Public Force and to the President of the Republic.

4. As from July 31 1010 no pension benefits may be granted through pacts, labor collective conventions or arbitration. The present pension benefits obtained through pacts, collective labor conventions, arbitrations or agreements, will not be incremented or improved and must be completed before July 31 2010 or they will lose effectiveness.

5. Teachers will continue to be entitled to pensions according to the provisions of Law 812 of 2004 or of the National Development Plan. This means that teachers appointed before June 27 2003 will continue to be entitled to a pension as from the age of 55, in the case of men,

[45] http://www.presidencia.gov.co

and as from the age of 50 in the case of women, in amounts equivalent to 75% of the average salary of the last year. Teachers who were appointed after June 27 2003 will be entitled to a pension with two more years of age.

6. A new transitory paragraph was incorporation that deals with the situation of the members of the penitentiary and prison custody corps. They will continue to be considered as a high risk profession according to the provisions of article 140 of Law 100 of 1993 and of decree 2090 of 2003 and their benefits will be maintained.

7. With respect to the transition regime to obtain the old age pension, its elimination as from July 31 2010 was approved, but will be maintained up to the year 2014 for persons who have quoted a minimum of 15 years or 750 weeks. According to the foregoing, as from July 31 2010 the retirement ages will increase by two years (women to 57 years and men to 62 years) for those who are not affiliated to the transition regime stipulated by Law 100 of 1993.

According to the same source,

The Finance and Social Protection Ministers, Alberto Carrasquilla and Diego Palacio, respectively, declared that they were satisfied with the approval of the pension reform.

The Finance Minister pointed out that with the text approved in the Senate, the saving for the Nation and for Colombians amounts to 40 billion pesos during the coming years. "The reform saves future contributors approximately 17 points of the Gross Domestic Product and this is worth approximately 40 million pesos. Monthly allowance 14 represent about 23 million pesos, more or less one half», he stated.

Diego Palacio in turn indicated that this law is an important advancement and one step further more with respect to those taken during the last 3 years to have a more equitable pensions system that will ensure the monthly payments for present and future retirees. "This not only has an important fiscal impact but it is transcendental because it has an impact on a more equalitarian system, much more equitable and much more viable and reassuring for the country» he stated."[46]

We must point out that, according to the information of the source consulted, although the initial proposal of the Government presented one year ago was more radical, with this reform as approved up to date it will be possible to decrease the pressure on public expense only by 40 billion pesos in spite of the 78 billion pesos of savings estimated with the approval of the original project.

The matter of pensions constitutes for Colombia one of the most complex challenges, because of the total amount of fiscal revenue of the previous year, almost 40%, that is, 16 billion pesos, was destined to the monthly payments of only one million retirees. If this progressive deficit is not controlled, it will be impossible for the State to guarantee the eligible pensions nor those that will become eligible in the future.

[46] Summary extracted from the Web page of the presidency of the Republic of Friday, June 17 2005.

IV. Final considerations

Until the legislative act in the process of conciliation becomes a reality, it will necessary to propitiate structural solutions that will promote the true development of the collectivity by means of an actual guaranty of the economic, social and cultural rights within a context of economic sustainability and social equilibrium.

In an attempt to present an opinion on the tendency of pension regimes in Colombia, the definite reply to our question regarding the convenience of the present regulation on the matter of pensions, vis-à-vis the well founded concern about the inexistence of resources to finance even the already recognized fringe benefits, and the sensation of lack of protection and insecurity for the population generated, on the one hand by every legislative change and on the other by its judicial interpretation, compels us to consider that it is necessary to strive for the harmonization of two variables of transcendental interest: first, what is socially desirable, that is, the guarantee of the right to a pension of h entire population and, second, the economically possible, that is, an adequate financing that will integrate all those that are a part of the system (the State and the individuals, according to their possibilities) without which the pension chaos would be unavoidable.

In our opinion, the measures to be adopted must not fail to recognize the rights in favor of the citizens that in good faith have tried to construct, with economic projections based on the legitimate expectancies derived from the law, specific projects for their lives which are now unattainable.

The solution must not be reached either via the sacrifice of one single sector, that of the citizens who are in danger of paying more taxes and contributions without receiving in exchange any a guarantee from the state of a possible right to a pension according to their efforts and needs.

The definition of the reply must be the result of a joint participative and constructive creation effort of all the sectors involved, according to the political and economic development policies of our Social State Ruled by the Law. An approach that must be accepted by all with true responsibility and social conscience.