

Constitutional Claim Decision C-590/05.

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Citizen Rafael Sandoval-Lopez requested the Court to declare against the Constitution the expression "no action" under Article 185 of *Ley 906 of 2004*. For the plaintiff, this provision restrains the *tutela* against Supreme Court judgments, even when they violate fundamental rights.

The Court accepted the claim of the complainant and upheld the validity of the *tutela* against appeal decisions of the Supreme Court. To support its ruling, outlined several reasons. First, the 1991 Constitution expressly states that *tutela* proceeds to examine the action or omission of any public authority. Since Courts are public authorities, there is no doubt about the possibility of lodging a complaint against violations or threats caused by the act or omission of the judges. And, as this scope has been established by a constitutional clause, can not be restricted or modified by rules of legal order.

Second, the Court rejected the argument that action for protecting fundamental rights against judicial decisions was excluded from the legal system by itself, in sentence C-543/92. In that decision, the Court declared unconstitutional laws that conceived the *tutela* against sentences as a general rule rather than exceptional mechanism, but it did not deny that it is appropriate against judicial decisions that violate fundamental rights. This position enforces Article 2 of the International Covenant on Civil and Political Rights and Article 25 of the American Convention on Human Rights, which establishes the obligation of States Parties to implement a simple and effective remedy to protect fundamental rights, and ordered to ensure that the competent authorities shall enforce such remedies when granted.

Third, the Court refuted the interpretation according to which there shall be no *tutela* against judicial decisions. On the one hand, it is noted that, according to an "originalist" interpretation, when the constituents mentioned that *tutela* can be leading against public authorities, wanted to refer to the administrative authorities. For the Court, it is wrong to use that originalist method in this case because its application contradicts the text itself. Additionally, a review of Constituent National Assembly discussions reveal that the majority of constituents considered that *tutela* should proceed against sentences. On the other hand, others argued that it is not the nature of the action being a vehicle for challenging decisions of the judges. In a different sense, the Court found that compared doctrine agrees that the *tutela*, appeal of legal protection, or unconstitutionality action against judgments, is a necessary tool to ensure the Constitution "irradiation effect".

Fourth, the Court emphasized that the protection against sentences does not violate the principles of judicial activity. Independence, *res judicata* and legal certainty are not threatened by the *tutela*, since those principles involve the

respect of fundamental rights. In addition, the constitutional law is one that requires greater uniformity, because the Constitution radiates throughout the legal system. It was clarified, however, that because of the mentioned principles, the application of *tutela* against judicial decisions should be exceptional. That is, should be limited to events in which it is evident that the sentence injures or endangers fundamental rights, provided that protection is requested within a reasonable time to stop, immediately, the violation or threaten of the right.

Fifth, the Court argued that *tutela* against judgments of last resort, such as the criminal judgment appeals to the Supreme Court does not deny high courts jurisdiction, because Constitutional Court does not have constitutional authority to review strictly legal issues. The constitutional judges, including the Constitutional Court, should just interpret and enforce constitutional rights adequately.

Finally, the Court contended that the exceptional events in which is possible to lodge a complaint against sentences have been defined within its own cases law, and emphasized that plaintiff in the *tutela* should demonstrate two kinds of procedural requirements. Some general, that enable the citizen to proceed against a judgment, and other specific, which relates to the causes of the protection.

These are the general requirements:

- a. The matter under discussion should have evident constitutional relevance.
- b. The complainant should have exhausted all channels of appeals and petitions possible, except in the case of preventing the consummation of irreversible harms.
- c. The complaint must be brought within a reasonable and proportionate time after the event that caused the violation.
- d. When the violation derives from a procedural irregularity, it should be clear that the irregularity has a decisive effect on the decision, and that it affects fundamental rights of the plaintiff.
- e. The complainant should reasonably identify both the facts and the rights violated. In addition, complainant should have alleged the infringement in the judicial ordinary process, if possible.
- f. The complaint should not be about other *tutela* sentences.

Moreover, the Court said that it is imperative that the contested decision have at least one of the vices or defects hereinafter mentioned:

- a. Organic defect. It occurs when the judge is not authorized by the law to deliver a decision.
- b. Procedural defect. It occurs when the judge completely ignored the established procedure.

- c. Factual defect. It arises when the judge does not have any evidentiary support to pronounce the decision, or analyzed the evidence in a completely unreasonable way.
- d. Substantive or material defect. It occurs when the decision is adopted on the basis of nonexistent or unconstitutional rules, or if there is a clear contradiction between premises and decision.
- e. Induced error. It occurs when the judge is misled by others, and because of it, affects fundamental rights.
- f. The decision does not have grounds.
- g. The decision does not follow binding precedent.
- h. The decision violates directly the Constitution.