Court Cases

WORKER COOPERATIVES AND THEIR DEVELOPMENT IN THE COLOMBIAN CONSTITUTIONAL COURT'S JURISPRUDENCE

Antonio José Sarmiento Reyes[1]

Pontificia Universidad Javeriana – Bogotá, D.C.

Colombia

1. Introduction: the autonomy of cooperative law in Latin America

In Latin America, the existence of cooperative law has been recognized as a special branch of law[2], a topic that is still a subject of discussion among jurists and is also strange for public authorities, both judicial and administrative, who prefer to apply civil law, commercial law or labor law, rather than cooperative law, more than anything else, due to ignorance on the matter.

Those who defend the autonomy of cooperative law base it on its legislative, scientific and didactic autonomy. In the case of Colombia, cooperative law has legislative autonomy to a large extent, since there are special norms for cooperatives, such as the Law 79 of 1988, which is the General Law of Cooperatives; and the Decree 4588 of 2006, which regulates worker cooperatives. However, the gaps must be filled, in many cases, with the norms extracted from the Commercial Code, the Civil Code or the Labor Code.

The scientific autonomy of cooperative law is based on the existence of the universal principles of cooperativism, which are applicable to all cooperatives and at the same time differentiate them from other types of companies such as commercial enterprises. Likewise, there are special institutions of cooperative law such as the cooperative enterprise, a legal entity different from the commercial enterprise; the cooperative act that has the purpose of satisfying the needs and aspirations of the cooperative members, which is different from the act of commerce whose purpose is to generate profits; and other concepts that have developed in Europe or Latin America.

Finally, the didactic autonomy is the least developed. However, in some Latin American universities cooperative law is taught independently from civil, commercial and labor law; although, at this point of time, it is still emerging due to the lack of lawyers and professors specialized in the subject.

---

[1] Lawyer from the Universidad de Los Andes, Bogotá. D.C., Colombia. Masters in Law (LL.M.) Marburg, Germany R.F. Magna cum laude. Professor of Cooperative and Solidarity Law in the Pontificia Universidad Javeriana – Bogotá, D.C., Colombia. Member of the Legal Committee of the Colombian Confederation of Cooperatives -CONFECOOP. External legal advisor of the National Association of Employee Funds - ANALFE. Colombia. email: antoniojsarmiento@gmail.com

[2] COOPERATIVE LAW. III Continental Congress of Cooperative Law. Rosario, Argentina, julio de 1986, Intercoop 1987, p. 288.

Law for Cooperatives in Latin America ICA, Art. 6. https://www.aciamericas.coop/IMG/pdf/LeyMarcoAL.pdf

However, for the development of a special branch of law, not only is legislative, scientific and didactic autonomy required; but also, all the other formal sources of law are needed to contribute to that objective. Traditionally and in particular in Latin America, law, custom, jurisprudence and doctrine continue to be recognized as formal sources of law.

In this context, the rulings of the constitutional courts of each country take on a special importance. Unfortunately, due to the amount of cases that are subject to the judicial decisions of the constitutional courts, there are very few rulings that feed jurisprudence on cooperative law.

Hence the importance of the rulings issued by the Colombian Constitutional Court regarding worker cooperatives; not only for Colombian cooperative law, but also for Latin American and perhaps also for international cooperative law.

2. Worker cooperatives and cooperatives of users or consumers of services.

In Colombia, Law 79 of 1988 covers two areas: service cooperatives and worker cooperatives. Service cooperatives can be user or consumer cooperatives in which the principle of identity consists in a member being simultaneously owner, manager and user or consumer of the goods and services produced or provided by the cooperative to which he or she belongs. On the other hand, in worker cooperatives, that principle of identity consists in the member being simultaneously owner, manager and worker of his or her cooperative. In summary, instead of having two parties in a work contract: employer and employee, the associated workers are owners of the cooperative enterprise in which they work.

In this context, initially Decree 460 of 1980 was issued, to be later derogated and replaced by Decree 4588 of 2006, due to the abuses committed by certain companies that used worker cooperatives to override the rights of workers to a minimum wage and dignified working conditions, arguing that since they were not dependent workers they were not protected by the norms of the Labor Code.

Several employers began to terminate the contracts of their dependent workers, to later force them to form pseudo worker cooperatives, in order to contract directly with those cooperatives and pay them a global value, lower than the labor costs they previously paid for having dependent workers.

Hence, trade union organizations and several cooperatives raised their voices in protest against those abuses and a division arose between those who considered that the pseudo worker cooperatives should be declared unconstitutional and those who defended them, requesting the government to protect the workers from the mentioned abuses.

3. Ruling C-211 of 2000 from the Constitutional Court of the Republic of Colombia.

In a publication for the Pontificia Javeriana University[3], among other writings, Professor Belisario Guarín Torres provides clarity to the subject, stating that it is necessary to distinguish between three kinds of work relations:

a) Independent work.

b) Dependent work.

c) Associated work.

a) Dependent work. In his article, Professor Guarin argues that, there are two parties involved in contracts of dependent work: employers and employees. Additionally, in the dependent work relationship, a subordination element exists which is a unique feature that identifies this type of work. That is because the employer gives continuous orders to their employees, similarly, employees are subject to work schedules and other conditions imposed by the employer. The remuneration in these contracts is called salary. According to the Colombian legislation, in order to guarantee vital minimums for the workers, these contracts are subject to the Labor Code.

b) Independent work. In this type of work relationship, the workers are not subordinates of the contractor. The worker provides services autonomously to whoever hires it. The payment is not called salary, instead, it is agreed through a civil contract between the signing parties and it is called honoraria. For these reasons, these employment relationships are not subject to labor law. In Colombia, these employment relationships are regulated by either civil law or commercial law.

c) Associated work. Associated workers are not independent or dependent, but voluntarily submit themselves to the statutory and regulatory norms that are autonomously dictated by their cooperative. That is, they are subject to rules that are self-accepted by the group, issued by the associated workers themselves through the General Assembly of the Cooperative. In other words, the subordination element does not exist since there is no employer imposing the rules. Similarly, since all the workers are associated, neither is there independent work, instead, there is collective work.

The payment for this type of work is known in Colombia as compensation, because it is neither salary nor honoraria. Compensation is taken from the cooperative's surplus and then assigned to the member workers according to the regulations they have approved, taking into account the type of work performed, the performance and the amount of work contributed[4].

This position was accepted by the Colombian Constitutional Court in the ruling C - 211 of 2000, in which the constitutionality of worker cooperatives had been questioned because it was considered that they violated the rights of the workers by not granting them the protections of labor law. On that occasion, the constitutionality of a different form of employment relationship was acknowledged. Associated work is different from independent and dependent work relationships, hence, they are not subject to labor law.

[3] Sarmiento Reyes, Antonio José y Guarín Torres, Belisario. Legal Aspects of Cooperative Management. Pontificia Universidad Javeriana, 3 edition, 2003, Bogotá, Colombia, p. 252 et seq.

[4] Decree 4588 of 2006, article 25.

Nevertheless, the Constitutional Court stated in that ruling that associated work is protected by the Constitution and by other norms of national legislation, based on the right of freedom of association, as well as by special norms such as social security and welfare minimums that must be respected in all types of work relationships.

This decision saved the worker cooperatives from disappearing from Colombian territory. Nonetheless, despite the positive effects of the recognition by the Colombian Constitutional Court of associated work as a legitimate form of association and business, advisors and unscrupulous entrepreneurs continued to take advantage of the fact that worker cooperatives are not subject to labor law norms to disregard the rights of the associated workers. In consequence, instead of supporting associated work as a form of democratization of property and a more equitable way of distributing the economic benefits obtained by a company, more than 12,000 associated work pseudo-cooperatives were established with the sole purpose of reducing labor costs.

This generated new lawsuits and forced a more robust jurisprudential development on the matter.

4. World declaration on worker cooperatives. ICA 2005

The World Declaration on Worker Cooperatives was approved within the framework of the General Assembly of the International Cooperative Alliance (ICA), held on September 23, 2005 in Cartagena, Colombia. This declaration accepted the basic characteristics of the worker cooperative, the rules of its internal functioning, its relations within the cooperative movement, relations with the State and with regional and intergovernmental institutions, relations with employers' organizations, and relations with workers' organizations.

The World Declaration on Worker Cooperatives was revised to conform with the definition of cooperative, its values and principles contained in the Declaration of Cooperative Identity of the ICA (Manchester, 1995), itself endorsed by the International Labor Organization -ILO through its recommendation 193 of 2002, on the promotion of cooperatives.

The World Declaration on Worker Cooperatives had as one of its sources the doctrinal developments that had been made on worker cooperatives and served as a reference for later judicial rulings that have developed jurisprudence on the subject at an international level.

5. Law 1429 of 2010 on formalization and generation of employment.

With the purpose of counteracting abuses against associated workers and, on more than one occasion, in order to discourage the creation of worker cooperatives, the Colombian government issued several regulations that provided for drastic sanctions against those who contracted with pseudo worker cooperatives. As a result of these regulations, many legal advisers recommended to the companies not to contract again with worker cooperatives due to the legal risk implied by the sanctions provided in the new norms. Consequently, the number of worker cooperatives in the country decreased abruptly from

approximately 12.000 to less than 3.000[5]. The fact that a large number of worker cooperatives were dissolved and liquidated soon after the government issued the new regulation is proof that in the majority of the cases the cooperative principle of autonomy did not apply in these cooperatives. On the contrary, most of the worker cooperatives were managed by external agents, and not the workers themselves. Therefore, it is evident that these external agents were seeking the economic benefits of not having to comply with the stricter labor law when hiring their workers directly.

Once those comparative advantages disappeared, most workers were hired as dependent or as independent workers through work or civil contracts.

Of course, it was positive that most of the worker pseudo cooperatives were dissolved; but the new regulations brought great difficulties for the real worker cooperatives.

In this context, the Congress of the Republic of Colombia approved Law 1429 of 2010: "By which the law of the formalization and generation of employment was established" which, in its Article 63, states:

> *"Article 63. RECRUITMENT OF PERSONNEL THROUGH WORKER COOPERATIVES. The personnel required in any institution, public or private, needed for the performance of its permanent mission activities may not be recruited through worker cooperatives that do labor intermediation or under any other type of relationship that affects the constitutional, legal and welfare rights consecrated in the current labor laws.*
>
> *Without prejudice to the minimum inalienable rights provided in article three of Law 1233 of 2008, Pre-cooperatives and Worker cooperatives, when in exceptional cases provided by law they have workers, shall remunerate these* ***and the associated workers for the work performed****, in accordance with the provisions of the Labor Code.*
>
> *The Ministry of Social Protection, through the Territorial Directorates, will impose fines of up to five thousand (5,000) monthly minimum wage salaries, to the public institutions and/or private companies that do not comply with the provisions described. The pre-cooperatives and cooperatives that fail to comply with the provisions of this law will be subject to dissolution and liquidation. The Public Servant who contracts with worker cooperatives that do labor intermediation for the execution of permanent missionary activities will incur a serious fault.*
>
> ***TRANSITORY PARAGRAPH.*** *This provision shall be effective as of July 1, 2013.*
>
> *The underlined and highlighted text was subject of a lawsuit before the Constitutional Court."*

[5] www.Supersolidaria.gov.co

6. Ruling C-645 of 2011[6]: Most important considerations about associated work.

6.1 Purpose of the lawsuit.

The main purpose of the lawsuit against Article 63 of Law 1429 of 2010 was to obtain a declaration of unconstitutionality in relation to the following words: "Pre-cooperatives and Worker cooperatives, when in exceptional cases provided by law they have workers, shall remunerate these and the associated workers for the work performed, in accordance with the provisions of the Labor Code..."; and, in addition, this lawsuit pursued a declaration of enforceability of such provision on the basis that the labor legislation should be applied to the relations between worker cooperatives and their associates, when the competent authority warned of a situation of fraud to ordinary labor legislation.

In summary, the plaintiff maintained that the relevant provision, by imposing on Worker cooperatives (Cooperativas de Trabajo Asociado -CTA-) and on the relations between them and their associated workers the application of the labor regime of subordinate and dependent labor, did not take into consideration the concept of cooperative, solidarity and self-managed labor, which is constitutionally protected.

6.2 Considerations of the Constitutional Court

The importance of this ruling of the Colombian Constitutional Court lies in the general considerations that are made about associated work, by which the existing jurisprudence on worker cooperatives is considerably broadened and its constitutional validity continues to be defended, without prejudice to the fact that the State may set some minimum parameters to prevent decent work from being affected.

The following is a summary of the most important analyses and arguments on which the Constitutional Court based its decision.

6.2.1 Essential elements of the contract for the constitution of a worker cooperative.

The essential elements of the contract for the constitution of a worker cooperative, according to the Constitutional Court, would be the following:

i. Plurality of persons.

ii. Contribution mainly in labor.

iii. Object of social interest and non-profit.

iv. Simultaneous quality of contributor and manager.

It is noteworthy that the Constitutional Court did not use the term used in the Colombian cooperative legislation for this contract, namely: "cooperative agreement", and therefore, since it is mentioned in the law, it is a recognized type of contract.

[6] http://www.corteconstitucional.gov.co/relatoria/2011/C-645-11.htm

Article 3 of Law 79 of 1988 calls this contract: "cooperative agreement" to distinguish it from the partnership contract, by which a commercial company is constituted; and defines it as follows:

"A cooperative agreement is a contract entered into by a certain number of persons, with the aim of creating and organizing a legal entity under private law called a cooperative, whose activities must be carried out for purposes of social interest and without a profit motive."

"Any economic, social or cultural activity may be organized on the basis of the cooperative agreement."

The partnership agreement, on the other hand, is essentially for profit.

6.2.2 Relevant characteristics of worker cooperatives.

The Constitutional Court recalled that, in the Ruling C-211 of 2000, it identified the following as the most relevant characteristics of worker cooperatives:

(i) Voluntary and free association.

(ii) Equality of cooperatives.

(iii) Absence of profit motive.

(iv) Democratic organization.

(v) Work of the associates as a fundamental base.

(vi) Development of economic and social activities.

(vii) Solidarity in compensation or retribution.

(viii) Entrepreneurial autonomy.

6.2.3 Autonomy of worker cooperatives.

In previous rulings, the Constitutional Court had pointed out that, in accordance with article 59 of the Law 79 of 1988[7], in worker cooperatives, the system of labor, welfare, social security and compensation shall be established in the statutes and the internal regulations, since such matters originate in the cooperative agreement and escape the scope of regulation of labor legislation.

This figure is based on the principle of solidarity and it has manifestations from both, the perspective of the right of association and from the right to work.

In this regard, the Constitutional Court stated that worker cooperatives are born of the free and autonomous will of a group of people who decide to unite to work together under their own rules

[7] **ARTICLE 59:** In worker cooperatives in which the capital contributors are at the same time the workers and managers of the company, the system of work, welfare, social security and compensation shall be established in the statutes and regulations by reason of the origin of the Cooperative Agreement and, consequently, shall not be subject to the labor legislation applicable to dependent workers and the differences that arise shall be subject to the arbitration procedure provided for in Title XXXIII of the Code of Civil Procedure or to ordinary labor justice. In both cases, the statutory rules must be taken into account as a source of law.

contained in their respective statutes or internal regulations and added that, as stated in Judgment C-211 of 2000, in these cooperatives their members must be subject to rules that are strictly observed by all members, and approved by themselves, with respect to the management and the administration their organization, the distribution of surpluses, aspects relating to work, compensation, and all other matters relating to the fulfillment of the objective or purpose for which they decided to voluntarily associate which, in this case, is none other than to work together and thus obtain the income necessary for the members and their families to lead a dignified life.

The Constitutional Court pointed out that the power of members of such organizations to self-regulate does not mean that the legislator cannot regulate certain matters related to them.

In particular, the Constitutional Court stated that among the restrictions that the legislator may impose on worker cooperatives are those aimed at protecting the rights of people in general and workers in particular, and that, in any case, the regulatory autonomy of these entities is limited by constitutional principles and values, especially in the face of the possible affecting of fundamental rights.

6.2.4 International Classification of Status in Employment (ICSE-ILO) and associated work.

In Ruling C 645 of 2011, which is the subject of this article, the Constitutional Court referred to the International Classification of Status in Employment (ICSE), developed under the auspices of the ILO and according to which it is possible to distinguish six groups of workers:

1. Employees.
2. Employers.
3. Own-account workers.
4. Members of producers' cooperatives.
5. Contributing family workers.
6. Workers not classifiable by status.

According to the Constitutional Court, the above classification is based on a set of criteria, which differentiates two large groups of workers: a) Employees, on the one hand; and b) Own-account workers, on the other; taking into account, among other factors, consideration of the type of relations that arise between the parties to the employment relationship and various aspects of assuming the economic risk inherent in the respective activity.

In the case of the associated workers, the Constitutional Court stressed that it is necessary to bear in mind that they not only receive benefits, but also that, given their status of owners, they also have to assume the risks, advantages and disadvantages inherent in the execution of any business activity. Thus, if there are losses, they must assume them jointly, which is not the case in dependent employment relationships.

For the Constitutional Court, the recognition of the difference in labor regimes, according to the different modalities of work, does not mean that fundamental rights should not be respected or guaranteed in worker cooperatives, since otherwise, there would be discrimination against associated workers.

As an example, the Constitutional Court pointed out that fundamental rights such as equal opportunities, fair and equitable compensation for work in proportion to the quantity and quality of work, the principle of favorability in favor of the worker in case of doubt in the application and interpretation of formal sources of law, the right to training, the necessary rest, the social security, among others, are not alien to any kind of work.

6.2.5 ILO Recommendation 193 of 2002 and worker cooperatives.

This tension between the autonomy of the worker cooperatives and the rights of workers has been raised in various scenarios, in which the question has been discussed as to whether it is possible to apply to such cooperatives the labor legislation proper to the modalities of dependent work.

In this regard, within the ILO, it has been pointed out that Recommendation 193 of 2002 refers to the obligation of States to promote all types of cooperatives, including worker cooperatives, however, it points out the need to ensure that such cooperatives are not created or used to evade labor legislation or to conceal dependent employment relationships.

In this context, the ILO distinguishes between, on the one hand, the law governing the relationship between employer and worker and, on the other, legislative provisions aimed at ensuring decent working conditions.

Thus, at the meeting of experts on co-operative legislation in 1995 in Geneva (See. Labour Law and Cooperatives. Experiences from Argentina, Costa Rica, France, Israel, Italy, Peru, Spain and Turkey, Genève: International Labour Office 1995) it was concluded that ILO standards and legislation on basic human rights, health, social security and safety in the workplace, among other matters, were applicable to members of worker cooperatives, even if they were not subject to the rules that generally regulate the relations between employer and employee.

In this manner, it is possible to conclude that:

(i) Worker cooperatives constitute a valid option in the light of the Constitution so that people can self-generate work, in the context of freedom and autonomy.

(ii) Such cooperatives are subject to labor legislation aimed at ensuring that the work is carried out in conditions of dignity, and

(iii) The State has, on the one hand, the duty to promote both the associative forms of solidarity forms of ownership for workers, as well as for the respect of the minimum rights and guarantees of associated workers, and, on the other hand, the obligation to penalize the abuse of this form to create of pseudo-cooperatives with the purpose of circumventing the more protective labor legislation.

In conclusion, the Constitutional Court said, referring again the Ruling C-211 of 2000:

- The legal nature, purposes, structure and functioning of worker cooperatives are different from those of commercial companies and, therefore, it is valid for the legislator to define a different regime for them, especially in labor matters.

- In any case, this differentiated regime cannot ignore the fact that the work carried out by the members of worker cooperatives should have the same constitutional protections of dependent workers, since the

Constitution does not protect work as an abstract concept, instead, it protects "the worker and his or her dignity".

6.2.6 Labor legislation and its application in worker cooperatives.

The Constitutional Court then proceeds to analyze whether, despite the fact that, as a general rule, worker cooperatives and relations with their associated workers are not subject to the labor legislation specific to dependent workers, there are exceptions to this rule. In other words, if there are situations in which labor legislation is applied in worker cooperatives.

To such an end, the Constitutional Court refers to the Rulings C-855 of 2009 and T-449 of 2010, in which, after reiterating that the relationship that exists between the worker cooperatives and its members, in principle, are not governed by labor legislation, however, the Constitutional Court warned that the following exceptions exist:

a. When non-associated people are casually recruited for:

i) Occasional or incidental work that falls outside the tasks that characterize the normal and regular type of activities of the cooperative.

ii) Temporary replacement of a member who, in accordance with the bylaws or the associated work regime, is unable to render his or her service in relation to a task that is indispensable for the fulfillment of the corporate purpose of the cooperative.

iii) To recruit specialized technical personnel, necessary for the fulfillment of a project or program within the principal activities of the cooperative, for which there is not a member worker within the cooperative with the technical capacities for the execution of such project, provided that the chosen person does not want to associate with the cooperative.

b. The other hypothesis that requires labor legislation to apply occurs outside the scope of the cooperative or pre-cooperative and occurs when an associated worker is sent, under its mandate, to provide services to another person or legal entity.

c. The reality contract. That is to say, when a dependent employment contract is disguised in the form of a pseudo-worker-cooperative. In this event, pointed out in several Rulings of the Constitutional Court, once it is determined that in reality there is contract of dependent employment, the labor legislation must be applied.

In summary, in all of these cases, ordinary labor legislation must be applied, which inevitably displaces the provisions of the statute or associated labor regime and other regulations of the cooperative.

6.2.7 Feasibility of regulating by law that in worker cooperatives the same minimum guarantees offered to dependent workers by the labor legislation are respected.

The Constitutional Court itself stated that the legal problem of the lawsuit was whether the provision in question, article 63 of Law 1429 of 2010, when it states that pre-cooperatives and worker cooperatives had to pay both their associated workers and their dependent workers (in the exceptional cases in which they may have them) under the provisions of the Labor Code, is contrary to the constitutional precepts that protect work in all of its forms, the guarantee of the right of association and private autonomy; and

whether the provision in question violated the principle of equality, the constitutional mandate to promote solidarity forms of ownership and opposed the postulate of good faith.

In this regard, the Constitutional Court considered that there was no doubt that, in accordance with the law, when worker cooperatives hire dependent workers, the labor relationship that arises is fully subject to the provisions of the Labor Code.

Likewise, when the conditions of the so-called reality contract are established, because dependent and subordinate work relationships are hidden under the guise of Worker Cooperatives, the provisions of the Labor Code must be applied, with the additional circumstance of the solidarity that arises between the cooperative and the contracting third party in relation to labor obligations, and without prejudice to the application of the sanctions foreseen in the law itself.

Nevertheless, the provision in question, according to the Constitutional Court, goes beyond the two previous hypotheses, insofar as the legislator opted to maintain the Worker cooperatives as an option available to people facing unemployment and informality, so it is necessary to arrive at an interpretation of the provision that is compatible with that reality.

In this regard, it considered that an interpretation that harmonizes the reference made by the provision in question to the Labor Code to determine the remuneration of associated workers with the nature of the Worker Cooperatives, leads to the conclusion that the compensation that the associated workers receive in those cooperatives for the work performed must be provided in such a way that, it respects the associative and solidarity nature of this work modality, and it is equivalent in conditions to those that have been provided for the remuneration in the Labor Code as minimum of guarantees for workers.

Consequently, in Worker cooperatives, the compensation of the associated workers for the work performed must be in line with the provisions of the Labor Code in aspects such as the minimum wage, a matter in relation to which there is express regulation in Law 1233 of 2008; the principle of equal pay for equal work (Colombian Labor Code Art. 143); the percentage of the salary that may be paid in kind (Colombian Labor Code Art. 129); overtime and nighttime charge (Colombian Labor Code Art. 168) or paid rest and vacations (Colombian Labor Code Arts. 179 et seq.)

Therefore, the Constitutional Court pointed out that, in view of the ambiguities that arise from the law, in order to achieve such harmonization, it is necessary for cooperatives, in the exercise of their autonomy, to adapt their internal system to take advantage of this new reality, and the same must happen with the state regulatory framework, in order to allow the equivalence of benefits between the two modalities of work to be carried out in accordance with the minimum guarantees established in the Labor Code.

The foregoing, in the opinion of the Constitutional Court: "does not imply substituting the legal regime of Worker cooperatives, nor that in each case, in the exercise of their autonomy, those who are part of the Worker Cooperatives establish for its members conditions of compensation in accordance with those that have been provided for as a minimum of guarantees in the Labor Code, similar to those conditions existent for the regime of dependent work carried out under the employment contracts, ". (Underline added).

The provision in question imposes a restriction on worker cooperatives, however, as has been pointed out, it has been developed within the scope of the ILO's doctrinal considerations on the protection of decent

work, which admit the autonomy of cooperatives and the possibility that they operate under a legal labor regime different from the one proper to subordinate work, as long as the conditions that define decent work are respected, an aspect whose development falls within the power of configuration of the legislator.

Such consideration, if analyzed in the light of the protection of the fundamental right to work, is not detrimental to the Constitutional order or even to the recommendations of the ILO, since what is done is to extend the minimum conditions of remuneration foreseen for dependent workers, to those people who carry out the work through worker cooperatives, starting from the objective concept of protection of work and of the dignity of the person who carries it out.

Similarly, in the opinion of the Constitutional Court, the extension of the minimum guarantees of remuneration for dependent workers to members of worker cooperatives is not intended to affect the fundamental right of association, private autonomy or the duty to promote solidarity forms of ownership, since the free will of people that are interested in the worker cooperative figure is not being affected, on the contrary what the provision seeks is precisely to prevent cooperatives from being created with the aim of reducing the economic compensation paid to laborers, generating an unjustified displacement of work linked by employment contracts.

In the same way, it should be recognised that the obligation to extend the minimum conditions of remuneration provided in the labor legislation to persons associated to the worker cooperatives does not affect the fundamental right to equality. As the Constitutional Court clarifies, the imposed obligation does not consist in extending in its entirety the parameters foreseen in the Labor Code to the associative work relationship, but it is limited exclusively to the area of compensation, or payment of the workers.

In the Constitutional Court's view, such imposition is not discriminatory, since it is an extension of minimum conditions applicable to the different types of work, respecting the differences that may exist between them. The above, derived from the conception of the right to work not only on a human right level, but starting from its essential relation with human dignity, which is why certain minimum conditions necessary for the realization of these rights must apply across the board to the different modalities of work, without stopping at simple contractual formalisms.

In the same way, the maximum Constitutional Court finds that the proposed approach fully conforms to the principle of good faith, since it does not start from the premise that all the people that create worker cooperatives, do so with the purpose of concealing dependent work relations or affecting the rights of workers, but from the reality of the country itself.

In the same sense, from a Constitutional point of view there is an overriding need for the following approach: “the provision in question requires a balance between, on the one hand, the need to maintain employment generation options available to people, even though this may imply, at least in certain initial stages, a sacrifice in working conditions, and, on the other hand, the imperative mandate to promote respect for minimum guarantees for workers and to promote conditions that allow work as a whole to develop progressively under more equitable conditions from the perspective of income distribution and the satisfaction of people's minimum living standards.”

This of course, allows the legislator in turn, in the exercise of its regulatory autonomy, to proceed to impose objective burdens whose purposes are to address the abuses to which the associative form of work

is subject, and not automatically assuming bad faith on those that use worker cooperatives, and that they simply use them to elude the more rigorous labor legislation.

6.2.8 Executory force of the provision in question.

Finally, the Constitutional Court decision declares it to be a legal obligation to remunerate associated workers, under at least the same conditions established in the Labor Code for dependent workers, in accordance with the Political Constitution of Colombia.

7. Conclusions

This jurisprudence, as may be concluded, is of considerable importance for Latin American co-operative law and, in general, for associated labor law; since, in the first place, the constitutionality of worker cooperatives is being recognized as a form of employment relationship different from dependent and independent work.

Second, self-regulation (autonomy) by the associated workers is being guaranteed by setting their own rules (statutes and regulations), rather than being subject to labor law in every respect. But, at the same time, as a third central point, it enables the legislator to establish some minimums with direct reference to the Labor Code, in order to prevent the abuse of this autonomy to the detriment of decent work.