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The ordinary judge as a constitutional judge: About the confluence of constitutional justice models and their projection in the protection of constitutional rights

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Abstract

The Constitutional state of law implies the existence of a supreme norm endowed with legal effectiveness and binding character. In the concentrated model of constitutional justice, the ordinary justice bodies share with the constitutional jurisdiction (Constitutional Court) the function of controlling the validity of the norms and acts of the public and private powers. Whereas in the diffused model, the Supreme Court fulfills that function. This article explores the role of the ordinary judge in relation to the two archetypes of constitutional justice as well as the evolution of these archetypes toward eclecticism.

Keywords— **judge, constitutional justice, constitutional rights, court**

I. INTRODUCTION

Following a constitutional state of law, the ordinary judge always performs tasks as "judge of constitutionality." As part of their jurisdictional function's exercise, the organs of ordinary justice are subordinate to the mandate stipulating direct application of the Constitution; either to interpret the entirety of the legal system "in accordance with" the guidelines, rules, and prescriptions contained therein; or to resolve the conflicts that arise by applying directly the normative parameters inspired by the fundamental norm.

There are, therefore, two essential methods of integrating the Constitution in the judicial reasoning and resolutions issued by judges and courts of justice. The judicial application of the Constitution starts at the latter's argumentative sequence stage through what is referred to

as "interpretation according to," a technique that grants the judge a faculty as a constitutional interpreter whose scope is albeit limited. It authorizes the judge to accommodate the meaning of the applicable law in the jurisdictional process to the content that emanates from the constitutional rules. Thus, with this formula, the "version" of the legal norm that is closest or most adequate to the requirements, formal and substantive, imposed by the Constitution is sought. Nevertheless, when implementing this methodology, the ordinary judge does not have total autonomy, in the sense that he cannot neglect, as an undisputed reference, the reading and interpretation previously made by that jurisdictional body in charge of "authenticating" the definitive version of the fundamental rule. In concentrated models of constitutional justice, the Constitutional Court or Court carries out this function. In the "diffused" models, the competence to determine the ultimate interpretation of the constitutional norms' meaning is held by the highest organ of ordinary justice (Supreme Court or Court).

In Spain, a case representative of the first aforementioned model is expressly imposed by the Organic Law of the Judicial Power (LOPJ) stipulating that ordinary judges must be subordinated to the highest interpreter of the Constitution (Constitutional Court): "The Constitution is the supreme norm of the legal system, and binds all the Judges and Courts, who interpret and apply the laws and regulations as per the constitutional precepts and principles, in accordance with the interpretation of the same ones that result from the resolutions issued by the Constitutional Court in all kinds of processes."[1] However, it should be clarified that the fulfillment of this obligation sometimes entails disagreements, and even conflicts, between the ordinary jurisdiction and the specifically constitutional one. As an indicative paradigm of these conciliation difficulties, we could cite the historical confrontation between the Constitutional Court and the Court of Cassation in Italy or the one that occurs episodically in the relations between the Supreme Court and the Spanish Constitutional Court.

As a second alternative, the judge also has the ability to evaluate and control the constitutional correctness of the ordinance. It is about a purification operation of the latter when its accommodation - via

hermeneutical interpretative path (interpretation according to) - to the constitutional norm is not possible. However, this alternative of judicial control and application of the Constitution yields qualitatively different results, depending on the model of constitutional justice implemented. In the "diffused" system, the control of constitutionality is carried out by the ordinary justice; it holds power to cease or suspend the applicability of any norm that is part of the legal system. However, in the "concentrated" model, this power is typically limited when it comes to norms with the rank of law (parliamentary laws or governmental norms comparable to the first in the source system). In the first, any ordinary judge is placed in a position of legal superiority over the other powers of the State endowed with legislative power (Legislative, Executive). While in the second, the ordinary judge is subordinate to the interpretation that emanates from the organ specifically instituted to define the content and meaning of the constitutional text; in this case, it acts or intervenes as a mere collaborator of the latter, insofar as it does not fall within its scope of attributions to invalidate or annul the legal norms that contradict them. This is a decision that has been monopolized by the constitutional jurisdiction (Constitutional Court).[2] [3] Therefore, the exercise of the control of constitutionality function is articulated through an incidental instrument that can be activated by the ordinary judge in the course of a judicial proceeding or after its completion. It receives different names, depending on the specific case and country: cuestión de inconstitucionalidad (Spain) questione di legittimità costituzionale (Italy), question prioritaire de constitutionnalité (France).

From another angle, the effects and scope of both archetypes of constitutional justice differ remarkably. The non-application ("diffused" model) is limited to the process that the judge is hearing, whereas the pronouncement of the Constitutional Court or Court in the concentrated model can lead to declaring the nullity of the rule. Incidental control arises from something concrete (judicial process), but its potential effects extend to an abstract dimension since it implies the possible declaration of invalidity of a law, with projection erga omnes and absolute invalidity of the norm subject to control by the constitutional jurisdiction.

However, the "diffused" system of constitutional justice can pose some problems, especially when trying to integrate those resolutions that, having originated from international jurisprudence, have declared an open contraction between national law and the jurisprudential parameters that interpret and apply some international instruments, which establish a conventional version of constitutionalized declarations of rights. The effectiveness of this supranational jurisprudence has to overcome the obstacle implied by the existence of a specific constitutional justice to which is exclusively attributed the competence to remove legislative norms that violate fundamental rights and freedoms from the legal system. In order to ensure that it is integrated into the national sphere, and therefore can be adopted in the resolutions issued by judicial bodies, the intervention of the state legislator is required. It is the only means endowed with definitive effectiveness with which it is possible to comply with the decisions and jurisdictional interpretation that warn of the incompatibility of national law with the human rights proclaimed in the international sphere. As long as the latter is not repealed, or until some corrective device that allows reviewing the judicial sentences already endowed with firmness is introduced, the obligation to accept its applicability within the framework of a process conducted within the ordinary national justice persists.

II. THE RELATIONSHIPS BETWEEN ORDINARY JUSTICE AND SPECIFICALLY CONSTITUTIONAL JUSTICE IN THE FRAMEWORK OF A TREND TOWARDS THE ECLECTICISM OF MODELS

With relative frequency, in that functional space where the constitutionality control function is carried out, institutional disagreements occur between the two jurisdictions in charge of guaranteeing the supremacy of the fundamental norm.

From the point of view of its original design, the concentrated model does not fully resolve how the ordinary judge relates and is subject to the dictates of the constitutional norm. The essential objective pursued was none other than to establish a procedure to ensure the binding of the legislator to the Constitution. In fact,

in the first case where this system is articulated (Austrian Constitution of 1920), the organs of ordinary justice were prohibited from carrying out this type of control. Kelsen himself already warned of the risk posed by excessive jurisdictional power, granting judges the ability to set the meaning of the precepts contained in the constitutional text, citing legal and political effects.

Things are very different in a "diffused" model of constitutionality control. The potential conflict does not occur here between the two jurisdictions (ordinary and constitutional), endowed with their own organic and functional autonomy, since interpretative disputes between judicial bodies are resolved within the Judiciary itself, using the mechanisms deployed by a hierarchical organization. In this system, the principle of independence is necessarily going to be modulated to guarantee the obligatory status and respect for the interpretation of the constitutional norm carried out by the jurisdictional body at the top of that judicial structure (Supreme Court).

In any of the modalities of constitutional justice, the democratic legitimization that the political institutions that are capable of normative production (Legislator and Government) have will always represent a conditioning factor of the intensity with which the constitutionality control function will be exercised by all bodies endowed with jurisdictional power (ordinary justice and constitutional courts).

In any case, the advantage that the "concentrated" model can have over the "diffused" one lies in the existence of a jurisprudential source -indirectly or de facto normative that imposes a binding and definitive reading from its hegemonic position and general in scope (erga omnes) in the process of constitutional validation of laws.

Nevertheless, the evolution of constitutional justice that has been consolidated in Europe since the second post-war period certifies the confluent tendency of the two theoretical or academic models to the point of configuring eclectic systems that contain elements of diffusion within a system that is constitutionally designed according to the original Kelsenian parameters. In this line, we could locate the institutional design that implements the fundamental norm that is promulgated in Spain (1978), and that could serve as a model reference

for other political-constitutional systems that "transition" towards democracy from authoritarian regimes characterized by the absence of freedoms. This is precisely the data that allows us to understand the need to consolidate the principle of constitutionality and the establishment of a jurisdiction specifically charged with enforcing the normative virtuality of the new Constitution.

If a balance were made in advance of the operation, as well as the way in which the collaboration in Spain between ordinary justice and specifically constitutional justice has been articulated, legally and in practice, it would be necessary to note some incidents that manifest disagreement and occasionally a certain level of conflict. In general, the common task of protecting constitutional rights and freedoms has been carried out with a dose of acceptable harmony between both jurisdictions. And this, despite the fact that the constitutional norm itself does not favor a harmonious future relationship between them, when it explicitly emphasizes the idea of hierarchical supremacy - and not the necessary functional cooperation - of constitutional justice over judicial bodies in matters of guarantees and rights (art. 123.1, CE).[4]

The evolution towards eclecticism or institutional miscegenation could be the dominant note in an almost "global" panorama of constitutional justice. It is leading to the incompetence, if not the progressive abandonment, of a typology corseted by academic canons, giving way to analyses that take more into account the "circular" experience of the models.[5] [6]However, this inclination to "ductility" and the importation of elements from other forms of constitutional justice is not an obstacle to recognizing a dominant fact. We refer to the fact that in most organizational formulas, the relevance that the function performed by the organs of ordinary justice is gradually acquiring as effective instruments in the control of the primacy of the constitutional text can be verified. [7]

However, autonomy does not mean and cannot be translated to interpretive "self-management" of judicial bodies when applying the Constitution to the specific cases they are hearing. This is an operation in which it will always be subordinate to a higher court, endowed with hegemony and monopoly over what can be called the

"authentic" or definitive interpretation of the fundamental rule. The dependence on the ordinary judge of exegesis carried out by a higher jurisdictional instance (Supreme Court or Constitutional Court) would be the common denominator of any model of constitutional justice. Obviously, the eventuality of a conflictive relationship is minor, or null if possible, when functions and bodies have been rigidly separated in the control of constitutionality. Until recently, France would be a clear example of a model based on the rigid separation between the jurisdictional functions between ordinary and constitutional justice. Up until the introduction of incidental constitutional control (question prioritaire de constitutionnalité), the Conseil Constitutionnel monopolized the interpretation and constitutional control of the law, while the ordinary justice limited its functions to the application of the law. Therefore, the inability to evaluate the validity of the legislative norms prevented the possibility of conflicts or divergences between both jurisdictions.

This preferred "hybrid" or "material" character predominates and is more than evident in Latin American constitutional justice systems.[8] To the extent that one could speak here of a true basic trilogy of paradigms. The institutionalization of a concentrated model of norms' validity control in a Constitutional Court presents two possible variables in turn: the first places it within the same organic structure of the Judicial Power, in the form of a specialized "Chamber" in a constitutional jurisdictional order; while the second alternative is condensed in the creation of an autonomous judicial institution separate from the organic structure of the Judicial Power, otherwise endowed with specific and specialized powers.[9]

In the case of Europe, the approach of constitutionally designed models is inspired from a concentrated system, which follows the original or Kelsenian pattern, but where "diffusivity" instruments are progressively introduced with a formula that attributes to judicial bodies the "natural" and immediate responsibility in the protection of constitutional rights. In these systems - functionally "polyhedral"[10], the ordinary justice shares with the constitutional one, jurisdictional and procedural spaces in the function of control of constitutionality; from the evaluation of norms with the rank

of law (mainly in the form of incidental control), to the protection and guarantee of constitutional rights through various forms of protection. However, this collaboration and competition never results in or reflects an equal relationship between both jurisdictions. The model is always based on the logical-functional supremacy of specialized constitutional justice that guarantees doctrinal and hermeneutic homogeneity. This model serves as a binding guide and orientation for other constitutional interpreters, from the legislator to the courts of justice.

III. AN APPROACH TO THE RELATIONS BETWEEN ORDINARY JUSTICE AND CONSTITUTIONAL JUSTICE IN SPAIN

The competence framework and organizational structure on which the exercise of constitutional jurisdiction rests in Spain seem to favor a conflictive dimension between ordinary justice and ad hoc constitutional justice. The divergences originate mainly from the way this model of constitutional justice works. It involves a set of actors who share the same task (control of constitutionality), albeit projected on different planes from the procedural point of view. At first, through the preferential and summary procedure or legal protection, followed, always subsidiary, by the constitutional appeal (art. 53.3, CE).

In this way, dissociation is produced between what is configured as a predominantly concentrated pyramidal structure, on the one hand, and a largely and yet "diffused" and multipolar functioning, in which the organs of the Judiciary gradually gain prominence[11] To these two factors should be added a variable that often makes harmonization between the two jurisdictions difficult. The reason is synthesized in the constitutional affirmation of judicial independence. A structural and functional principle that safeguards a space of autonomy for the ordinary judge, not only as an interpreter of legality, but also in his capacity as a natural judge, and -in the procedural sequence- of the constitutionality of the rules and acts of the public powers. In this sense, the legislative reform of the Organic Law of the Constitutional Court (Organic Law 6/2007), has expressly emphasized the role of ordinary judges as the natural guarantors of constitutional rights, as well

as the strictly subsidiary conception of the action of the TC in this specific function.

The formulas to implement this need to establish basic and clear criteria for functional division may require the collaboration of the legislator. The objective must focus in any case on the distinction, not always easy or viable a priori between what would be questions or problems of legality, directed and resolved by judicial bodies, from those other matters of a strictly constitutional nature, where the principle of the interpretative supremacy of the Constitutional Court is imposed. The greatest difficulty lies in, and also provides a functional space, where the responsibility of both jurisdictions converges in the delimitation of the scope and content of procedural guarantees.

The clearest example in this sense is offered by article 24 of the EC, which establishes a fundamental right that can be homologated to that which has also been accepted by a large part of the constitutional texts currently in force. Indeed, the right to "effective judicial protection" implies the constitutionalization - sometimes implicit and other times explicit and detailed - of a catalog of guarantees that must be made effective in the processes that are substantiated by the organs of ordinary justice. As a positive evaluation of what this right (or better: rights, in the plural) has meant in Spain, it is necessary to note its contribution, mainly thanks to a broad doctrine of the Constitutional Court, to the process of adapting the different laws of prosecution to the principles and rights of a constitutional and democratic State of law. Although this legal configuration has not served to draw a clear and precise border between the questions of legality and others with constitutional significance, thus avoiding "areas" of potential conflict between the two competent jurisdictions to ensure compliance.

When it comes to pacifying the "border" between both jurisdictions, it is necessary to resort frequently to institutional positions of a voluntarist nature, through which, what we could call a culture of self-containment, is consolidated. The latter aims to consolidate a moderate attitude, when it comes to delimiting the scope of its own competence, beyond legal mandates or guidelines that are ultimately ineffective for understanding their respective attributions.

Along this, a trend has been observed in the Judiciary as a whole towards solutions "in dialogue"[12] with the Constitutional Court. In the same way, the TC has made an effort to define the principles of legality and constitutionality and consequently to carry out, in this way, the necessary functional division between ordinary and constitutional justice. The criterion that synthesizes this "moderate" position of the constitutional jurisprudence is contained in pronouncements of the following tenor: "from the perspective of fundamental rights, it is not up to (the TC), in principle, to interpret ordinary legality, but rather to oversee -in defense of fundamental rights- that the interpretation of ordinary legality made by the courts is in accordance with the Constitution" (STC 162/1992).

It should be noted that this objective has also been favored by the impulse of the legislator who has tried to delimit more clearly the normative dimensions - ordinary legality and constitutionality - on which the jurisdictional competences of ordinary justice and constitutional justice are projected (LO 6/2007). The reform of the LOTC has entailed the creation of a space of "competence immunity" or effective "shielding" of the powers of the TC, with respect to attempts to weaken its monopoly as the supreme interpreter of the fundamental norm.[13]

The first article of Law 6/2007 perfectly describes the purpose pursued by the legislator: 1. *In no case may a matter of jurisdiction or competence be brought to the Constitutional Court. The Constitutional Court will delimit the scope of its jurisdiction and will adopt whatever measures are necessary to preserve it, including the declaration of nullity of those acts or resolutions that impair it. Likewise, he may assess his competence or incompetence ex officio or at the request of the party*. 2. *The decisions of the Constitutional Court may not be prosecuted by any judicial body of the State*.

This formula clearly ensures the hegemony of the TC by blocking the possibility of an eventual review of its resolutions (sentences, orders) by organs of ordinary justice. On the other hand, this power is reinforced by the competence to adopt any "measure" that the Court itself deems necessary to preserve its jurisdictional powers. The circuit closes with the power granted by the LO to annul all the acts and resolutions of any other power or

institution of the State that intends to restrict the functions granted by the EC.

Additionally, with the latest reform of the LOTC (LO 15/2015), the role of the TC in the enforceability of its resolutions is indisputable, which can even reach and have a possible projection on political institutions. The TC now has the power to request from "institutions, authorities, public employees" the information it deems necessary to know the degree of effective compliance with its decisions. In the event that this requirement is not met, it is authorized to adopt measures, which can range from the imposition of coercive fines to the possible suspension of officials who disobey those requirements from their functions, reaching a possible substitute execution by the same Court. The circuit that guarantees this "enforceability" is closed, with the potential communication to the Public Prosecutor's Office excluding the opportune testimony of individuals) regarding the refusal to comply with its orders and resolutions and the determination for this of possible criminal responsibilities.

IV. THE RIGHT TO A JUDICIAL PROTECTION OR PROTECTION OF CONSTITUTIONAL RIGHTS, AS A CONFLUENT SPACE IN THE MODELS OF CONSTITUTIONAL JUSTICE

The jurisdictional protection of constitutional rights is not a task that belongs in and of itself to the consubstantial nucleus of constitutional justice.[14] However, a superficial exploration of the design and evolution of the two "classic" systems in which the articulation of the former was translated, highlights the generalization of mechanisms or formulas to guarantee constitutional rights in the framework of judicial procedures.

The explanation of such an expansive phenomenon has to do, in the first place, with the "guarantee" that is projected from the categorical affirmation of the principle of constitutional primacy. Indeed, the instruments - structural and jurisdictional - that are available for the protection of constitutional rights and freedoms provide the exact measure of its normative effectiveness.[15] Nevertheless, at the same time, both in its subjective dimension and from its "objective" potentiality, they are decisive for the consolidation of a jurisprudential dogmatic, in which it recognizes the real scope of the

fundamental principles and values of a Constitutional State.

In Europe, the most representative instruments of this "guaranteeist" trend have been configured in the form of jurisdictional processes, with a theoretically individualized approach and effects, such as the complaint appeal (Germany) or the 'amparo' appeal (Spain). Its implementation can also be found in a good part of Latin America, although here with a notable difference both in terms of terminology and in terms of the specific procedural mechanisms with which it is intended to safeguard the jurisdictional protection of constitutional rights.

What could be considered as a kind of "right to constitutional protection," actionable on an individual basis, represents the essential complement of those "normative" guarantees, which also benefit from but operate in the most objective sphere of the ordering. One of these other forms of indirect protection - and general in regard to its effectiveness - would be the "reserve of law" (ordinary or qualified). It obliges to establish the basic regulation of rights in parliamentary laws, avoiding -or even prohibiting- the possibility that the Executive Power (Government) can carry out this fundamental task when setting the "legal configuration" of constitutional rights and freedoms. Similarly, sometimes attempts are also made to ensure rights through safeguarding by the fundamental norm of a minimum - or essential - "content" of rights. This material scope of rights would remain outside the "availability" of the legislator, which allows constitutional justice to consolidate a standard of protection that prevents radical regressions or involutions.

In the jurisdictional sphere, the defense of rights is dissected in two main ways. The first being the generic protection that is articulated from the recognition of a fundamental right of access to justice, and its specific derivatives, in the form of constitutional guarantees of the criminal process. Regardless of the way they were formulated in the constitutional text (as general principles or as subjective rights), the truth is that they will operate and are exercisable as subjective public rights that can be invoked before judicial bodies. Similarly, in its "objective" aspect, the explicit recognition in the constitutional norm of these individual rights or guarantees enables their use as a control

canon in the evaluation of the laws that develop the different jurisdictional procedures.

In addition, the safeguarding of substantive constitutional rights in a jurisdictional sphere can be supported by specialized and reinforced "devices" in terms of the projection of their effects. In this sense, the existence of a double instrumentation is observed, potentially intervening in a double jurisdictional sphere. As specific guardianship procedures that are activated before the ordinary justice which could be included in the expression or denominator of judicial protection.

The first system of "constitutional certification" is put into practice with the so-called judicial review; a formula that was introduced to the jurisdictional sphere during the 19th century in the United States, and that entered into force in this area after the approval of the initial amendments to the Constitution, due to which a true declaration of rights is introduced (1791). In this original version of a diffused constitutionality control model, ordinary judges are granted the authority and responsibility to purge the order of the norms that contravene constitutional rights and mandates. Any judicial body (personal or collegiate) was able to act as a "negative legislator," being empowered to suspend in the specific case - not to annul (ex tunc) with general effects_ (erga omnes), the law that violates a constitutional right. The "diffused" model of constitutional justice implies the consideration of all ordinary judges as judges of constitutionality; although its effectiveness is limited, since the rule that has not been judicially applied because of its contradiction with the Constitution, it remains in force as part of the legal system. Excessive heterogeneity or dispersion in the jurisprudential doctrine of the Constitution is solved when the highest body of ordinary justice adopts an interpretation with effects. The value of the "precedent" is established with the principle of stare decisis, which acts as an inescapable and binding interpretative rule for the bodies located in the lower levels of the judicial structure. This is the homogenization method in the judicial application of the Constitution, and by extension, of the jurisdictional protection of the rights enshrined in it.

However, undoubtedly, the most guaranteeing instrument that marks a "global" trend that the Constitutional State

has experienced has been what is known as constitutional protection[16] –although it may be referred to in different ways. Its first institutionalization took place in Mexico with the Constitution of Yucatán (Mexico) in 1841 and later with the Mexican Constitution of 1917. The original model later influenced European constitutionalism, specifically in the Constitution of the Second Spanish Republic (1931), where a similar mechanism was implemented, called recourse for individual guarantees, activated once the other means of protection of certain constitutional rights were ineffective. This first European experience of individual protection will be echoed in one of the most emblematic Constitutions of the second post-war period (Fundamental Law of Bonn, 1949), and later, during the 1970s, and again in a Spanish constitution (the CE of 1978). From these European continental reference models, constitutional protection is going to be imported into the Ibero-American constitutional orders;[17] as well as back to the political context that arises in the old continent after the fall of the Berlin Wall, in a good part of the constitutional norms promulgated in Eastern Europe.

It should be pointed out, however, that this competence to carry out a judicial review of constitutionality does not end with this first and pioneering model. The same function will be shared by the Judiciary within the framework of the "concentrated" models of constitutional justice. Through the technique of "incidental control"; that is, within the context of a main judicial process, the ordinary judge communicates to the constitutional judge (Court or Constitutional Court) the doubt based on an applicable and relevant rule to resolve the case at hand. Only the latter has the competence to decide on the nullity of a law. At this point, a qualitative difference is marked with the "diffused" model, in which the ordinary judge enjoys much broader power over the effectiveness of the legislative norm. Thus, when the "diffused" model considers that it causes an injury to any of the constitutional rights, it is able to neutralize its application to the judicial process. While the "concentrated" model reserves to the Constitutional Court the definitive ruling on the validity of the law.

V. CONCLUSION

The trend towards hybridization in Europe and Latin America of the "pure" or original models of constitutional justice makes it possible to reinforce the ways of protecting fundamental rights.[18] What did not seem to correspond to the "pure" and abstract Kelsenian model (the protection), ends up being configured as an element that may not be substantial but is perfectly compatible with it. The "circulation of models" is also projected on the instruments and methodologies that are embedded in the ordinary justice for this objective.

The phenomenon, which has an easy monitoring in Ibero-American constitutionalism, is part of a system that essentially mimics the North American judicial review but incorporates other elements -structural- relative to the continental European model, with a clear orientation of reinforcing the protection of some rights that have been constitutionalized in contexts where there are objectionable deficits of jurisdictional guarantees. In this way, institutional variants end up coexisting, whereas the Supreme Courts still retain the hegemonic power as the supreme interpreter of the constitutional norm and the rights that are proclaimed in it. Without forgetting that other sub-models that approach or imitate the pure Kelsenian also subsist, structured around a new jurisdictional instance (Constitutional Court or Tribunal), created ad hoc and with the capacity to impose the authentic reading of the content of rights and freedoms.

In any case, what seems to be distilled as a concurrent fact of these tendencies, towards the approach of models, is the idea that the responsibility in the application of the constitutional norm no longer rests solely with a specialized judge who adopts an "abstract" method of control of constitutionality.

NOTES

[1] Francisco Rubio Llorente, 'La Relacion Entre Tribunal Constitucional Y Poder Judicial En El Ejercicio De La Judisdiccion Constitutional', Resvista Espanola de Derecho Constitucional 1982, no. 4 (1982): 35.

[2] Pablo Pérez Tremps, 'La Cuestion De Inconstitucionalidad En El Derecho Espagnol', Estudios Constitucionales 3, no. 1 (2005): 127-48.

[3] Juan Antonio Hurtado Martínez, 'La Evolución Del Sistema Francés Como Modelo De Control De Constitucionalidad De Las Leyes', Revista de derecho 2012, no. 10 (2012): 711.

[4] Francisco Rubio Llorente, 'El Tribunal Constitucional', Revista española de derecho constitucional, no. 71 (2004): 11-33.

[5] Luca Mezzetti, 'Sistemas Y Modelos De Justicia Constitucional a Los Albores Del Siglo Xxi', Estudios constitucionales 7, no. 2 (2009): 281-300.

[6] Roberto Scarciglia, 'La Justicia Constitucional Además De Los Modelos Históricos: Metodología Comparada Y Perspectivas De Análisis (Constitutional Justice Beyond the Historic Models: Comparative Methodology and Perspectives of Analysis)', Boletino Iberoamericano de Justicia Constitucional, no. 17 (2013): 325-37.

[7] Tania Groppi, '¿ Hacia Una Justicia Constitucional" Dúctil"? Tendencias Recientes De Las Relaciones Entre Corte Constitucional Y Jueces Comunes En La Experiencia Italiana', Boletín mexicano de derecho comparado 36, no. 107 (2003): 481-504.

[8] Pablo Pérez Tremps, 'La Justicia Constitucional En La Actualidad. Especial Referencia a América Latina', Revista del Foro Constitucional Iberoamericano 2(2003): 66-81.

[9] Giancarlo Rolla, 'La Evolución Del Constitucionalismo En América Latina Y La Originalidad De Las Experiencias De Justicia Constitucional', Anuario iberoamericano de justicia constitucional, no. 16 (2012): 329-51.

[10] Luis Lopez Guerra, *El Poder Judicial En El Estado Constitucional*, (Lima: Palestra Editores, 2001).

[11] Gerardo Ruiz-Rico Ruiz, *La Aplicación Jurisdiccional De La Constitución*, (Valencia: Universidad de Jaén, 1997).

[12] Rosario Serra Cristóbal, 'Nuevos Tiempos En Las Relaciones Entre El Tribunal Supremo Y El Tribunal Constitucional En España:¿ De Las Desavenencias a Una Relación Dialogada?', Anuario iberoamericano de justicia constitucional, no. 18 (2014): 371-99.

[13] Luis Esteban Delgado Del Rincón, 'Los Conflictos Entre La Sala Primera Del Tribunal Supremo Y El Tribunal Constitucional: Génesis, Evolución Y Algunas Propuestas De Solución', Revista general de derecho constitucional, no. 4 (2007).

[14] Gerardo Ruiz-Rico Ruiz and María José Carazo Liébana, *El Derecho a La Tutela Judicial Efectiva: Análisis Jurisprudencial*, (Valencia: Tirant lo Blanch, 2012).

[15] Giuseppe de Vergottini, *Diritto Costituzionale Comparato*, (Padova, 2019).

[16] Eduardo Ferrer Mac-Gregor, 'El Amparo Iberoamericano (Estudio De Derecho Procesal Constitucional Comparado)', Pensamiento Constitucional 12, no. 12 (2006): 191-221.

[17] Giancarlo Rolla, 'La Evolución Del Constitucionalismo En América Latina Y La Originalidad De Las Experiencias De Justicia Constitucional', Anuario iberoamericano de justicia constitucional, no. 16 (2012): 329-51.

[18] Lucio Pegoraro, 'La Circulación, La Recepción Y La Hibridación De Los Modelos De Justicia Constitucional', Anuario iberoamericano de justicia constitucional, no. 6 (2002): 393-416.