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CONSTITUTIONAL JUDICIAL DIALOGUE: INTERNATIONAL STANDARDS AND JUDICIAL PRACTICE

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Summary

Dialogue between courts is a mechanism for improving modern constitutional jurisdiction. The growth of information in this century has led to complex conflicts, making it difficult to provide a constitutional response solely based on the internal context of the country. Thus, there is a tendency among constitutional judges to look for other experiences to summarize their impasses, dialogical activities, and exchange of legal reasoning between courts, an expression capable of contributing to reducing the discretion of the constitutional interpreter and the protection of fundamental rights.

After the thematic detailing, the methodological aspects applicable to these vocalizations are evaluated, explaining in general their conditions, characteristics, modalities, object, hypotheses and objectives, to address in the following topic the assumptions and legitimizing bases of judicial dialogue, to prove how constitutional theory serves as a support for the construction of this network of legal interaction, highlighting, in particular, the perspective of constitutionalism as a dynamic process, the contribution of constitutional hermeneutics, countermajoritarian the position of the Court and the improbability of building a Global Constitution in the world.

Finally, we try to systematize judicial dialogues between Constitutional Courts, offering a procedural interpretation of how a foreign judgment can be internalized in the national reality of the Supreme Court, emphasizing the possibility of a step-by-step approach to contextualize constitutional orders inserted in different contexts, mainly using comparison as an interpretive method. In this context, the work is the result of the reflexive organization of the exchange of influences between constitutional judges, who play an essential role in the collaboration of the rationalization and control of power with the exchange of horizontal experiences, given that the dissemination of jurisprudential agreements between constitutional courts are tools capable of reducing the limits of the interpreter's discretion and protecting fundamental rights that are vulnerable due to the level of rooting of paradoxes and their global projection in constitutional jurisdiction.

Key words: judicial dialogue, constitutional courts, European Court of Human Rights, court decisions, validity.

1. Introduction

Judicial dialogue is a human rights communication tool that, in its best expression, contributes to the optimization of transnational protection of human rights. Judicial dialogue is, without a pipe, one of the most fashionable concepts in the right-wing world. How the courts interact with each other to resolve those complex issues that concern more than one ordination is of obvious interest. And if this is true in general terms, then the judicial dialogue has found the most fruitful field for activity in the field of international law. In Europe, the legal space consists of different levels, each with its constitutional Court. The constitutional courts of the Member States, the Court of Justice of the European Union, and the European Court of Human Rights must ensure the effectiveness of certain freedoms, the material content of which is homogeneous. But if everyone has a say in this already somewhat crowded house, no one can impose themselves on others. In this context, only through dialogue can possible differences be smoothed out. However, this phenomenon does not only occur on the European continent.

The functional definition of judicial dialogue focuses on the advantage that, as a tool of legal communication, it could play, first of all, in the protection of human rights and, in general, in the qualitative development of the right person as such. From this point of view, dialogue would be fruitless. He interprets from cognitive activity at the judge's expense, striving to form legal knowledge within the framework of the verdict, judicial, and case management.

2. The Legal Nature of Constitutional Dialogue

The metaphor of dialogue between constitutional courts and legislatures was born in Canada to describe the role of the Supreme Court after the adoption of the Charter of Rights and Freedoms in 1982. It was then considered again in the Anglo-American academic space of comparative constitutional law, and then in Latin America, to describe or call for a new concept of constitutional justice, whose deliberative rationality would enhance or even exceed political representation. These formulations illustrate a certain circulation of constitutional ideas simultaneously with doctrinal work to legitimize the power of judges in very different contexts. Already in Canada, this metaphor caused heated debate. The connection of constitutional justice with the advisory paradigm raises questions, since it is difficult to imagine how the control function of a judge and his powers to abolish or amend legislative texts could be anything other than a transfer within the separation of powers.

Constitutional justice was first developed a century later, particularly at the end of the Second World War, and the theory that accompanied it (Ginsburg T., Versteeg M., 2014). This refers to the one proposed in the context of continental Europe by the Austrian legal theorist Hans Kelsen, who participated in its formation in Austria in 1920. Schematically, the legal order is a system of norms built hierarchically, and each norm operates when the norm is developed of the highest rank, up to the Constitution (Kelsen H., 1962). The judge checks the validity of the norms within the system; A constitutional judge, whether he is a court specializing in this review or an ordinary judge under the supervision of a general supreme court, verifies the compliance of all or part of the norms with the constitutional norm, thus performing an essential function in structuring the legal order (Kelsen H., 1928).

Constitutionalism and constitutional justice underwent a new transformation in the last two decades of the twentieth century, when neo-constitutionalism redefined legal systems. In addition to the increasingly frequent appeal to higher norms, called constitutionalization or fundamentalization, there was a substantialization of the legal justification based on texts related to these laws. Higher standards are a balancing act embodied by proportionality control (Barberis M., 2015). Then the legitimacy of the legal order passes from the law and representatives to the rights, principles, and values that the constitutional order will strive to achieve in the "process of axiologizing legal orders" (Champeil-Desplats V., 2012). Constitutional justice is no longer a procedural tool for verifying the validity of a norm in the system of positive law that Kelsen imagined; it becomes, in the words of Georges Vedel, the guardian of a certain transcendence specific to the rights and principles that pass through the legal system (Vedel G., 1988).

This evolution, which is less linear than its general presentation might suggest, has been accompanied by numerous and more or less subtle criticisms. The most famous was formulated in the 1960s, when the American constitutionalist Alexander Bickel proposed the "objection to the counter-majority" (Bickel A., 1986) against the argument in the case of Marbury v. Madison. The judge, who checks the conformity of a rule with the Constitution, is opposed to democratically elected representatives - this is especially true in cases where the judge reviews a law passed by Parliament. Alexander Bickel agrees with Justice Marshall's argument that the primacy of the Constitution must be effective, but denies, in the absence of legal provisions on this point, that the judge is the body authorized to do so; she even considers, from the point of view of moral and democratic legitimacy, that she is the least qualified body to do so, since she is not elected. The specter of an illegitimate "government of judges" has flourished (Lambert E., 2005). This criticism is similar to that initiated by Hans Kelsen, regarding the "intolerable" transfer of power from Parliament to the constitutional judge, when the reference standard of its review is based on rights and not only on procedural norms (Kelsen H.). An ideological dimension is added for those who believe that constitutional courts establish neoliberal values that would simultaneously subjugate political, legal, and sociocultural elites (Hirschl, R., 2004). In essence, the problem lies in the supremacy of the decisions of the constitutional judge in the legal order compared to the decisions of elected representatives, as US Supreme Court Justice Robert Jackson said: "We are not final because we are infallible, but we are infallible only because we are final." This evolution, apparently less linear than its summary might seem, was accompanied by numerous and more or less sophisticated criticisms. The most famous was formulated in the 1960s, when the American constitutionalist Alexander Bickel proposed a "counter-majority objection" (Bickel A., 1986) to the argument in the case of Marbury v. Madison. A judge who checks the compliance of a norm with the Constitution is opposed to democratically elected representatives – this is especially true when the judge controls a law adopted by the Parliament. Alexander Bickel agrees with Justice Marshall's argument that the primacy of the Constitution must be effective, but denies, in the absence of legal provisions in this regard, that a judge is an authority authorized to do so; It even considers, in terms of moral and democratic legitimacy, that it is the least qualified body to do so, since it is not elected. The specter of an illegitimate "government of judges" has blossomed (Lambert E., 2005). This criticism is similar to the one initiated by Hans Kelsen himself, regarding the "unbearable" transfer of power from Parliament to the constitutional judge, when the reference standard for its revision is based on rights, not only procedural norms (Kelsen H.).

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Several theoretical answers have been provided, demonstrating that the constitutional judge does not exercise such supremacy. There are two series.

These rather formal answers prove that various power relations in the political and legal system limit the powers of a judge. These limitations refer to the institutions that are courts, that is, their composition, organization, or status (Tusseau G., 2012). They also refer to the norms in question. Since the constitutional judge is only a negative legislator who has the possibility of repealing the norm adopted by the positive legislator, the latter may instead adopt an equivalent norm (Kelsen H.), which can create different problems depending on the modalities of constitutional justice specific to each legal system. The constituent bodies can revise the reference standard for the control exercised (Vedel G., 1992). The judge is then only a "switch" for Louis Favoret, whose function would be to indicate to the representatives whether the provision in question should fall within the scope of the law – then this provision corresponds – or to the Constitution – this provision should be elevated to the constitutional rank, to be valid. Then, the judge does not have the "last word" (Favoreu L., 1994); he only has the first word on which the electoral composition should depend. Other, more substantial answers consider that the constitutional judge only applies normative principles characteristic of the legal community and which are binding on him, as proposed by Ronald Dworkin, or that he formulates values necessary for the legal order, which voting (Dworkin R., 1995) cannot constitute a mere vote, as Alexander Bickel himself wrote, or that he participates through his deliberative capacity in a form of democratic representation (Bickel A.). Another, more critical approach assumes that the judge is introduced into the environment of dominant opinion, socio-economic relations, or strictly legal constraints that weigh on his reasoning (Rousseau D., 1995). Conversely, some studies in the United States are interested in the interpretation of the Constitution by political bodies, or even reduce each department to its function, returning the judge to his function of resolving disputes (Troper M., Champeil-Desplats V., Grzegorczyk C., 2005), which is tantamount to both a reminder of the limitations that weigh on the judge and a departure from the distorted vision of constitutionalists who would expect too much from the courts. To move away from this variant of the so-called political constitutionalism (as opposed to "legal constitutionalism"), which considers that it is the executive and legislative branches as representatives, and not the judge, who should ensure compliance with the Constitution (Bellamy R., 2007).

In this context, the idea of constitutional dialogue emerged in the late 1990s, which was at once a theoretical response to the argument of the opposing majority, a middle ground in these debates, and a description of a new practice of constitutional justice in specific legal systems. It takes the form of a metaphor for a dialogue that would take place between the constitutional judge, on the one hand, and the executive and legislative branches, on the other. This dialogical judicial control would consist of an interaction through which the political authorities would have the opportunity to confirm their interpretation of the Constitution and respond to what the judge had proposed (Tushnet, M., 2009).

While neo-constitutionalism asserted itself at the end of the 20th century, this dialogical concept corresponded to a broader political thought. To preserve the axioms of liberal democracy while noting its aporias, despite the expectations raised by its arrival in 1989, many political theorists look beyond elections and propose a more deliberative approach. This new political procedurality brings together an unparalleled plurality of views and even makes their communication an active principle of democratic action (Habermas J., 1997). Often drawing on this work, proponents of constitutional dialogue argue that the judge is no longer content with monitoring the validity of norms and imposing his decisions on elected representatives, just as these representatives are no longer the sole depositories of political legitimacy. They all continuously exchange opinions, where no decision is ever final but is constantly open to discussion. The proposed reversal is total: the constitutional judge becomes an essential actor in democracy, since he produces arguments within the framework of public debates.

In this respect, the metaphor of dialogue would have enormous explanatory and transformative potential; It would allow both to abolish the postulates of constitutional theory in terms of constitutional justice and the separation of powers, and to explain as well as to relieve their tension; It would embody a new democratic moment of constitutionalism in the broader context of the crisis of liberal democracies and representation. In a sense, it is about preserving the idea of the constitutional judge and the fundamental axiologized norm that he would defend, without freezing the content of the constitutional order or assuming a higher legitimacy of any voice in the institutional game.

The metaphor has become classic in English-language works on comparative constitutional law, based on the observation of the Commonwealth

countries, where this dialogical alternative would appear, and in constant connection with the US tradition. The first thing to do here is to present the conditions of a particularly lively and stimulating debate. They are not entirely related to the French context, in which, as we have seen, the question of the relationship of the constitutional judge with other states has already given rise to similar questions. The debate on constitutional dialogue as such has also given rise to two studies in France (Carpentier M., 2019): particularly in-depth, they have attempted to place this concept within a model of constitutional justice and to logically break down its elements as possible criteria, which makes it possible to reassess the French tradition in this area usefully. This is not our aim here; rather, it is a matter of stepping aside and questioning the construction of doctrinal discourses concerning constitutional dialogue based on the context of this metaphor.

It is also difficult not to mention the dialogue between judges, which is often invoked in France to describe the exchanges that take place between national and European courts (Young A., 2017) through previous decisions, the influence that case law has on each other, and all the everyday moments of socialization that mark, in a broader sense, the "global community of judges" (Slaughter A.-M., 2003). Although the content of the constitutional dialogue (Dawson M., 2013) considered here is different, since it concerns legislative bodies, the two concepts nevertheless share the idea that courts are advisory bodies that facilitate debate in the public space. In both cases, dialogue places supreme judges as close as possible to values and far from the simple normative control envisaged by Kelsen, or even the traditional hierarchy of norms, as the theses of legal pluralism in Europe suggest (Auby J.-B., 2010). The dialogue of judges is like the dialogue studied here. This expression is so meaningless because it is used in a general sense to refer to the relations of systems, legitimizing the central place of the judge in modern societies (Magnon X., 2016). Suppose the metaphor of constitutional dialogue can tell us so much from a comparative perspective. In that case, it is because it is a compelling example of the circulation of legal concepts and instruments. In this regard, many of the difficulties experienced by legal science in general arise, namely the relevance of the scientific qualification of the so-called legal situation; the role of such qualification about the legitimacy of institutions and the interpretations of constitutional texts; the essential link between description and prescription, that is, between the restitution of a phenomenon and the formation of reality. This metaphor offers a privileged position to observe the link between the creation of law and its study. Dialogue is not a reality that can be accessed outside its doctrinal qualification. On the contrary, legal discourses here show their capacity to explain and justify one or another state of affairs in the game of power.

This is because the circulation of legal concepts and instruments, which has intensified in the process of globalization, tends to make us forget about the problems specific to the different contexts from which legal concepts and instruments emerge. Or even to conceal the fact that they are constructed, stemming from conflicting interests and academic spaces involved in games of influence, constitutionalism remains primarily a political phenomenon, and the search for the legitimacy of constitutional courts remains a matter of power. Although legal concepts do not circulate identically from one context to another or even take on very different meanings, their circulation ultimately provides an opportunity to shed more light on each context. We therefore propose to situate discourses on the dialogue between constitutional judges and legislatures in the context of the realities they faced.

We will first examine the emergence of the dialogue metaphor in Canada, which was used to describe the new State of positive law in the late 1990s. Adopting the Charter of Rights and Freedoms in 1982, the Supreme Court found itself in a completely new situation, compensated by original textual provisions intended to spare the legislator and the so-called dialogical practice of the Court. However, from the very beginning, this metaphor was the subject of sharp criticism, in particular because it lacked relevance to describe the reality of power relations in Canada, where the Supreme Court finally had the last word, breaking with the tradition of parliamentary sovereignty, and at a time when conflicts between the English-speaking majority and the French-speaking minority threatened the federal project. Similar developments affected New Zealand and the United Kingdom. The idea of constitutional dialogue was widely taken up during the 2000s in the English-speaking academic space of comparative constitutional law to form a new concept of constitutional justice, in contrast to the model embodied by the US Supreme Court. More recently, as it was becoming well-known in the English-speaking world, it was taken up again in Latin America, in favor of a completely different, much more radical theoretical approach, which is about the fight against the presidential form that freezes the game of power and inhibits the realization of social rights. These two formulations reflect an inevitable increase in the abstraction of the concept developed in Canada and a very different use.

3. The American Model of Constitutional Judicial Dialogue

This study analyzes the concept of judicial dialogue in multilevel protection of fundamental rights in the United States, Canada, and Latin America.

In particular, this phenomenon's different typologies, characteristics, and fundamental elements will be examined based on the most relevant doctrine and case law on the subject. Subsequently, the relationship

between the Constitutional Chamber and the Inter-American Court of Human Rights (hereinafter referred to as the ICCHR), that is, between the "Courts of San José" (Ferrer Mac G.E., Herrera García A., 2013), will be analyzed, in particular, through the hierarchy of the American Convention on Human Rights in domestic law, the use of the Inter-American Convention jurisprudence by the Constitutional Chamber and the reverse phenomenon, as well as the conflict that arose between both jurisdictions as a result of the decision in the Artavia Murillo case, to determine the presence or absence of judicial dialogue.

Since the mid-1990s, the first studies of "global constitutional law" have emphasized the growing role of constitutional judges as protagonists of legal circulation, using "extra-systemic" arguments or increasingly referring in their decisions to international law and the decisions of other constitutional courts (L'Heureux–Dube C., 2001). This phenomenon has been confirmed at the international level in the decisions of regional protection bodies such as the Inter-American Court of Human Rights and its counterpart, the European Court of Human Rights. The gradual increase in the recognition of foreign law and legal comparisons by domestic, international, and supranational case law highlights the so-called "judicial dialogue" (Bonilla Haideer M., 2016). In this regard, a distinction should be made between "horizontal dialogue" and "vertical dialogue". The first occurs between bodies of the same level, particularly Constitutional Courts, Chambers or Tribunals, or at the international level between the Inter-American Court of Human Rights and its counterparts, the European Court of Human Rights or the African Court of Human Rights. In this respect, there are legal systems that demonstrate openness in the use of comparative law and the jurisprudence of international tribunals, such as the Constitutional Court of South Africa, and, conversely, there are cases of legal systems where this openness is very limited, such as the Supreme Court of the United States. The second phenomenon, the so-called vertical dialogue, occurs in relations between national, international, or supranational jurisdictions and can be carried out from the top down or vice versa. In this field, the relations between the Constitutional Courts and the Inter-American Court of Human Rights are studied within the Inter-American System of Protection framework. In the field of multilevel protection in Europe, the relationship between constitutional jurisdictions and the European Court of Human Rights is analyzed, as well as at the supranational level, with the Court of Justice of the European Union (EU).

In the field of fundamental rights, it is possible to establish a common cultural space that allows the creation of the preconditions for establishing judicial dialogue. In this sense, the success of judicial dialogue is due to several factors: 1) the globalization of normative sources; 2) the internationalization of human rights and guarantees of their protection, which are no longer the exclusive jurisdiction of States, which is why there is a multilevel constitutionalism; 3) the existence of common problems. Regarding the latter, we can mention the protection of the environment, same-sex marriage, issues related to bioethics such as euthanasia, the beginning and end of life, religious symbols, international terrorism, the rights of immigrants, as well as the emergence of new rights related to new technologies, such as the right to access the Internet. These rights are present at all latitudes, and to them, national and international jurisdictions have had to give responses that are not the same at all latitudes. In this sense, the jurisprudence of a specific constitutional, convention, or supra-constitutional Court can stimulate a reaction in other legal systems that can propose an identical, similar, or different solution to the same problem, demonstrating the influence that can exist between jurisdictions and the weight that comparative law currently has (Vergottini G., 2013). Strictly speaking, the term "judicial dialogue" is used whenever a decision contains references to decisions that come from a system different from that in which a particular judge works and, therefore, external to the system in which the decision must explain its effectiveness. The distinction between "influence" and "interaction" is beneficial. The former is unidirectional, while the latter implies plausible reciprocity resulting in "mutual enrichment." So, only if we observe interaction does it seem reasonable to engage in the topic of dialogue.

In this sense, dialogue is a process of interaction and mutual relations. On the other hand, there can be a dialogue between legislators, that is, between different parliaments (Scaffardi L., 2011), as well as between doctrines, as reflected in recent studies (Pegoraro L.), but the object of our research will be the circulation of law through the interpretative activity of judges. The metaphor of dialogue between the Canadian constitutional judge and the provincial and federal legislatures has been the subject of much criticism, primarily for its relation to the reality of constitutional justice: here it is not so much a dialogue as a monologue of the Supreme Court of Canada, to which the legislator almost always responds approvingly (Morton F.L., 1999). Indeed, in 2003, Andrew Petter argued that behind this "dubious dialogue" lies the supremacy of the judge (Petter A., 2003), while "not all legislative responses are evidence of genuine dialogue, and many are better described as echoes, rather than responses, to standards set by the judge" (Petter A., 2003). Responding to a 2007 review of his first study by Peter Hogg, Andrew Petter argued that the notion of dialogue retains too much of a quantitative dimension, since the accumulation of a large sample of legislative and legal data does not allow us to demonstrate anything about the nature of the interaction between the judge and the

legislator. Let alone the democratic legitimacy of the constitutional judge (Petter A., 2007). Is any legislative action that affects Charter law a "legislative extension"?

Both authors acknowledged as early as 1997 that there were situations in which the judge reserved the final word. They argue that this is the case when the judge decides that section 1 of the Charter does not apply because the law is a denial rather than a limitation of a right, or when the unconstitutionality concerns the very purpose of the law, which is the first step in the review introduced by the Oakes decision, or, finally, when the issue is particularly controversial. The legislature refrains from acting; the judge must take a firm decision to provoke a reaction (Hogg P.W., Bushell A.).

There is still the possibility of applying this clause in Article 33, but we have seen that it has minimal reality. There are not so many possibilities left for an honest dialogue. It is not excluded that the use of metaphor partly creates the fact it should convey. Andrew Petter's criticism goes further, questioning, beyond the reality of the dialogue, its function. It is possible that "dialogue theory () came to the rescue" of Canadian judges as they "broke their teeth" on several complex political and social issues, when their position, before the adoption of the Charter, was much more procedural, often in the shadow of public debate (Petter A., 2003). The Charter appeared in the context of "liberal legalism", dating back to the nineteenth century, which saw the judge as a neutral and impartial arbiter, excluding any political assessments and reasoning solely based on legal texts, in a formalistic way (Petter A., 2003). Such an approach could not justify the position of the judge, who guaranteed legal statements proclaiming fundamental rights, and no longer simply a technique for organizing power and the distribution of powers. Thus, "Charter scholars have worked on alternative theories" to legalism that no longer works. The metaphor of dialogue has offered a theory for these new jurisdictional practices, such as the "creative" rewriting of legislation by judges or the proportionality review that supports the "apparently neutral way of making judicial decisions" characteristic of legalism. Although the proportionality test has a rational dimension similar to the mathematical objectivity described by Robert Alexi, it is, above all, an in-depth assessment of legislative acts that brings the judge dangerously close to the role of legislator or, at the very least, an evaluation of a political nature. The paradox is that to enter into this apparent logic of dialogue, the Supreme Court has not simply softened the sharpness of its provisions in place of a brutal censorship of the law; it has developed tools which, while allowing interaction with the legislator, place the Court in a privileged position in the legislative process. The metaphor of dialogue would not only help to create the reality it is supposed to describe and make it understandable, but it would also disguise a function that is difficult to accept: the legislator only responds to the norms that the judge establishes, interpreting the Constitution and assessing the content that opposes it. Thus, the use of the metaphor of dialogue, in Andrew Petter's view, besides being rather nondescript, misses its mark:

Used as a justification for constitutional review as it relates to the Charter, the theory of dialogue minimizes rather than legitimizes. By acknowledging the subjective nature of Charter decisions, the theory of dialogue undermines the legitimacy of constitutional review. At the same time, it seeks to explain why legislatures should be allowed to prevail over judicial decisions.

This analysis of the turning point in the Canadian political and constitutional order in the 1980s is similar to that of the Canadian political scientist Ran Hirschl. According to him, the establishment of constitutional justice would aim to preserve the threatening hegemony of the sociological group that holds the power of the legislative majority and constitutes, in the context of parliamentary sovereignty, by safeguarding its rights and participation in the political system in the event of the loss of such power, all under the impartial guarantee of the supreme judge (Hirschl R., 2004). In Canada, Prime Minister (and also a lawyer and law professor) Pierre Trudeau sought and then achieved the adoption of the Charter in the name of his unequivocal commitment to rights and freedoms. At the same time, he fulfilled another of his desires – federal unity – by imposing the same rule on the provinces. According to Ran Hirschl, this is a way to preserve English-speaking power over the federation by conceding rights within its borders to the French-speaking minority (Morton F.L., 1987) and entrusting the Supreme Court, a symbol of impartiality, to resolve sensitive issues concerning languages (Cour suprême du Canada, P.G. (Qué.) v. Quebec Protestant School Boards, 1984) and the desire for independence, which the famous decision of 1998 decisively limited (Cour suprême du Canada, Renvoi relatif à la sécession du Québec, 1998), making the Court the main forum for resolving these delicate political conflicts (Hirschl R., 2004). Where, on the other hand, we understand the interest of defending the office of the Supreme Court and its role in the constitutional dialogue: it is about ensuring that a third party, especially if it is not the result of an election, can confront a majority or a minority (as in Quebec) that would deviate from good federal legislation: in this sense, a judge is appointed, first of all, against separatist legislatures, or populism, as Kent Roach writes.

Elements of the Canadian debate primarily concern constitutional justice, which has been established since the end of the last century in many legal systems, in countries where liberal democracy was first established, as well as in certain countries of the South, where it takes on particularly innovative forms (Bonilla Maldonado D., 2013). Constitutional courts

then find themselves at the epicenter of public debate and democratic uncertainty. How they respond to this, especially when the law forces them to influence all aspects of politics, including economic, social, and cultural, is always marked by the "judge's fear of becoming a 'super-legislator'" (Roman D., 2012) and provokes reproaches or support from their privileged observers. This is because fundamental principles and rights, understood as structuring the legal order, require the judiciary to examine the positive obligations of States. This function is more essential than the simple guarantee of the hierarchical structure of norms in a liberal regime. At the end of these transformations, very schematically, parliamentary legitimacy was partially replaced by the legitimacy of constitutional justice. In this context, the metaphor of dialogue between courts and legislatures has life outside Canada and the Commonwealth, where Parliament has never known such sovereignty. In 2014, the Constitutional Court of Chile issued two rulings declaring the inapplicability of military justice on the grounds of unconstitutionality in cases involving civilian casualties or where the circumstances indicate that they constitute a widespread criminal offense. In both cases, the Court based its arguments on numerous references to both traditional international human rights law and the jurisprudence of the Inter-American Court of Human Rights (IACHR Court). The following questions arise from these examples: Can these cases be considered demonstrations of the judge's leading role under the prism of a new legal paradigm? Can these cases be demonstrations of the potential growth of the role of the constitutional judge in the context of the emergence of a new public law? Is there a dialogue between judges in these cases? Our position is that the recent decisions of the Constitutional Court of Chile, concerning the competence of military justice, are an example of what can be called a change in the legal paradigm, especially in the constitutional sphere. Such a paradigm shift would have, against the background of the slow emergence of a new public law, and as a characteristic feature, a leading role of the judge and a multilevel inter-judicial dialogue.

Different modalities of dialogue are presented under the auspices of human rights interpretation. This is why various types of dialogue translate into other varieties of interpretation.

4. Conclusions

Thus, "dialogue between judges" refers to the exchange of arguments, interpretations, and legal decisions between judges, particularly during debates, through case law or cooperation between courts. This dialogue is an essential feature of judicial work, since it most often determines the relationship between the judge and the legislator and between the judge and the magistrates who preceded him. The dialogue thus symbolizes the relationship that judges from different jurisdictions, sometimes from various countries, can have, particularly the fact that judges cite each other in their decisions. Institutional mechanisms can provide for this dialogue or even be made mandatory. These examples show that dialogue between judges increasingly occurs outside institutional channels and, above all, independently of the judicial hierarchy. We are witnessing a kind of "circularity of case law", since the dialogue can be horizontal and vertical, institutional or informal, national or international, international or transnational, in short, it is multidimensional.

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КОНСТИТУЦІЙНО-СУДОВИЙ ДІАЛОГ: МІЖНАРОДНІ СТАНДАРТИ ТА СУДОВА ПРАКТИКА

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Анотація

Діалог між судами є механізмом удосконалення сучасної конституційної юрисдикції. Зростання інформації в цьому столітті призвело до складних конфліктів, що ускладнює надання конституційної відповіді виключно на основі внутрішнього контексту країни. Таким чином, серед конституційних суддів існує тенденція шукати інший досвід для узагальнення своїх глухих кутів, діалогічної діяльності та обміну юридичними міркуваннями між судами, виразу, здатного сприяти зменшенню дискреційних повноважень конституційного тлумача та захисту фундаментальних прав.

Після тематичної деталізації оцінюються методологічні аспекти, застосовні до цих аргументів, пояснюються в загальному вигляді їх умови, характеристики, модальності, об'єкт, гіпотези та цілі, щоб розглянути в наступній темі припущення та легітимізуючі засади судового діалогу, довести, яким чином конституційна теорія служить опорою для побудови цієї мережі правової взаємодії, висвітлення, зокрема, перспективи конституціоналізму як динамічного процесу, внеску конституційної герменевтики, контрмажоритарної позиції Суду та неймовірності побудови глобальної Конституції у світі.

Насамкінець, намагаємось систематизувати судові діалоги між конституційними судами, пропонуючи процесуальне тлумачення того, як іноземне судове рішення може бути інтерналізоване в національній реальності Верховного Суду, наголошуючи на можливості покрокового підходу до контекстуалізації конституційних приписів, вставлених у різні контексти, переважно з використанням порівняння як інтерпретаційного методу. У цьому контексті робота є результатом рефлексивної організації обміну впливами між конституційними суддями, які відіграють важливу роль у співпраці раціоналізації та контролю влади з обміном горизонтальним досвідом, враховуючи, що поширення юридичних угод між конституційними судами є інструментами, здатними зменшити межі дискреційних повноважень перекладача та захистити фундаментальні права, які є вразливими через рівень вкорінення парадоксів та їх глобальної проекції в конституційній юрисдикції.

Ключові слова: судовий діалог, конституційні суди, Європейський суд з прав людини, судові рішення, аргументація.