# THE CONSTITUTIONAL COURT AND CONTROL OF PRESIDENTIAL EXTRAORDINARY POWERS IN COLOMBIA

Rodrigo Uprimny
Professor, Department of Law. National University of Colombia.

ABSTRACT

The paper analyzes the attempts of Colombian Constitutional Court to control the abuse of presidential emergency powers in the last decade. After describing the dilemmas that governmental emergency powers pose to constitutional regimes and explaining some particularities of Colombian (a democracy under permanent emergency), the article focuses on the efforts of the Constitutional Court to exercise a "material" control of the declaration of a state of emergency by the President. According to this legal doctrine, it is the duty of the Court to analyze if the facts invoked by the government constitute a crisis severe enough to justify the use of emergency powers. The article shows that the Court has exercised this material control in a quite strict way and has nullified several declarations of a state of emergency by different presidents. The article tries then to analyze how this form of judicial review has been possible in a country like Colombia, with a precarious democracy and a cruel armed conflict. The article describes also the impact of this form of judicial control in Colombian politics and offer some more general conclusions based on Colombian experience

## Introduction

There are strong theoretical and empirical arguments in favor of the thesis that the rule of law is essential for democratic consolidation and economic development. The existence of an independent judiciary capable of controlling government abuses is, on his part, an essential element of the rule of law. It is then important to improve our understanding of what are the factors that enable courts to fulfill properly this key function in precarious democracies. In that context, this paper analyzes certain aspects of the efforts of the judiciary on Colombia to control government.

In Colombia, there have been several attempts by various courts or judges to hold the government, or at least some government officers, accountable. For instance, the Conseil d´Etat has stated, on numerous occasions, that the Colombian Government had to pay monetary compensations to some citizens because of military or police human rights violations. Also, the Constitutional Court has tried to reduce impunity in cases of human rights abuses by narrowly interpreting the legal competence of military justice to investigate military and police officers. This has been important because,

according to human rights groups, the spirit of the corps and the direct participation of the public forces in the internal armed conflict have implied that the military justice system has not punished the military and police personnel involved in these crimes. Also ordinary judges and the Constitutional Court have tried to eliminate abuses and inhuman conditions in the prisons. There are other examples of judicial involvement of a similar nature.

In spite of this array of judicial efforts to develop some forms of executive accountability, this article focuses on just one point: the attempts of the Colombian Constitutional Court to control the abuse of presidential extraordinary or emergency powers in the last decade. Three reasons explain this choice: the intrinsic importance of this subject, the centrality of the Constitutional Court in Colombian politics, and the originality of the Colombian experience in this field.

First, this subject is significant not only in Colombia but also in theoretical and comparative terms because the abuse of governmental extraordinary powers is a permanent threat to democratic consolidation.

Second, during the past ten years, the Constitutional Court's leading role in Colombian political life has been acknowledged not only by those who support its labors, but also by its fiercest critics.

Third, one of the most important and original interventions of the Constitutional Court has been its efforts to restrict the President's use of state of siege measures. This is no mean feat in a country like Colombia, where emergency powers have been improperly utilized for several decades, even to the extent of putting at risk the maintenance of the rule of law[1].

The article has four parts. In the first part I show the importance of judicial control of emergency powers, that is, the judicial checking of those constitutional powers given to the Government in serious or war-like crises. In the second part, I describe some features of Colombian politics and the legal system that are important to understand the context of Constitutional Court intervention. The third part analyses how the Constitutional Court has endeavored to control presidential emergency powers. Part four evaluates how this has been possible and what has been the actual effects of this judicial involvement. Based on the Colombian experience, the essay concludes with a short theoretical reflection, on the possibilities and limits of judicial review as an instrument to avoid the abuse of emergency powers in a developing democracy.

## 1.The dilemmas of emergency powers: rule of law, war-like crises, emergency powers and judicial review.

War-like crises, that threaten the very existence of the state or the continuity of social organized life pose a difficult dilemma to the rule of law, especially in emergent or precarious democracies. The dilemma can be explained as follows: If you do not authorize governmental extraordinary powers to face the crisis, you face two dangers: Either the regime could collapse or, more probably, the government, without the possibility to resort to legal extraordinary powers to face the crises, would act illegally, with the consequent breakdown of the rule of law.

It therefore seems necessary that constitutional regimes recognize the existence of emergency or extraordinary powers to face this kind of crises. The essence of these powers, which some scholars call "constitutional dictatorship", is that they temporarily increase governmental faculties and authorize the restriction of some constitutional guarantees and personal fundamental rights in order to defend the constitutional order and reestablish normality[2]. This seems necessary for the continuity of the rule of law. But the dilemma emerges because in a lot of cases, these extraordinary powers, conceived to preserve democracy, have been an instrument that authoritarian governments have used to distort democracy and undermine the rule of law. This has been specially true in Latin America, where emergency powers have been used as a pretext for systematic human rights violations by antidemocratic regimes.

Constitutional regimes and legal scholars have responded to this dilemma in different ways, which may be classified in three main groups. Some argue that, because of the danger of abuse of emergency powers, we should better not incorporate this kind of regulations in constitutional regimes[3]. Other scholars claim that the previous choice is unwise and counterproductive because it stimulates constitutional breakdowns. They conclude that political realism recognized the need for sweeping extraordinary governmental powers to face serious crises. Finally, there is a middle position, adopted by international human rights law, asserting that emergency powers must be recognized but that they need to be strictly regulated and controlled, in order to prevent governmental abuses or extralimitations[4]. According to this third position, some regulations are important. It is necessary to stipulate what kinds of crises allow for the use of emergency powers. Governmental powers should be enumerated, and the legitimacy of its use should depend on its conformity to some principles, like the principles of necessity and

proportionality. Consequently, political and judicial controls should be established and strengthened.

This constitutional dilemma has obvious implications on judicial review of presidential decisions in war-like crises[5]. Some argue that judicial review is impossible because the use of extraordinary powers in serious crises falls within the realm of pure necessity and, therefore, cannot be subjected to any judicial scrutiny. This is clearer if judicial control operates during the ongoing crises. In this situation, judges tend to abdicate judicial responsibilities because of security concerns. They cannot stop executive self-aggrandizement because they perceive their own institutional and personal restrictions with respect to successfully responding to and overcoming profound social crises. Emergency powers are then seen as political questions that are not justiciable.

By contrast, other scholars argue that constitutional crises should be controlled by the judiciary as any other issue, no matter the intensity of the crises.

Recently, some scholars, like Robert Burt, have tried to depart from these two opposite views. Instead, they stress the importance of the teaching role of judges as an alternative theoretical paradigm to explain and justify judicial review of extraordinary executive powers. In this paradigm, judges function as 'special interest advocates'. According to Burt,

> *"This alternative –a third way to understand the judicial role- is not to conceive judges as the final authority responsible for balancing the demands of legal regularity against the claimed need for enlarged executive authority to protect the society's essential security. Instead this alternative sees judges in effect as 'special interest advocates' on behalf of the rule of law rather than as final decision-makers.[6]".*

In Burt´s approach, the fact that judicial review in times of crisis is not final has the paradoxical effect of strengthening judicial role in these situations. This because judges feel they can act more freely, knowing that their judgments can have some political influence, depending on the prestige of the judiciary, but at the same time knowing that it is not the last word on vital security issues.

Discussions on the judiciary's role in controlling extraordinary powers in constitutional crises are at the same time difficult and important, because they are related to central problems of democratic consolidation. The significance of these debates is greater in precarious or emergent democracies, such as Colombia, for at least two related reasons: (i) These

regimes are usually very vulnerable in economical and political terms; thus prone to face serious crises in which emergency powers appear to be necessary. (ii)At the same time, the dangers of abuse of these extraordinary powers are greater in these regimes, precisely because of the fragility of the rule of law. So, in emergent democracies, governmental extraordinary powers seem to be more necessary but also more dangerous than in consolidated democracies. The question that follows is, could judicial control be a useful instrument to reduce the dangers of emergency powers in emergent democracies? Or, by contrast, could the judiciary's involvement in these very complex situations be, if not impossible, at least dangerous, because it may either undermine judicial legitimacy or obstruct political measures to supersede the crisis? The Colombian experience could be useful to explore this dilemma. To understand the real meaning of the judicial attempts to control emergency powers in Colombia, it is necessary briefly to present some background to the Colombian political and legal systems.

## 2. A democracy in permanent emergency: Colombian legal and political systems and the abuse of emergency powers.

Colombia has long been a somewhat strange and paradoxical country. It is one of the oldest formal democracies in Latin America and has a long established tradition of civilian governments, in a region in which military rule has been very common. According to the English historian Malcom Deas, "this republic has had more elections, under more systems, than any other Latin American or European country "[7]. For example, its previous constitution (of 1886) lasted for more than 100 years, with only some very short interruptions to civilian rule, and Colombia has had more or less fair elections at least sine 1830.

Also, Colombia has had a relatively independent judiciary, at least since 1958. It was one of the first countries in the world to establish a system of judicial constitutional control or judicial review, which has been more or less respected by political actors for the last 100 years. Law, especially constitutional law, has thus played an important role in Colombian politics. Besides, until very recently, Colombia was seen as an economical and political stable country, at least according to Latin-American standards.

However, Colombia has not really been a consolidated democracy, due to three very negative shortcomings. First, for long periods at a time, Colombia has faced high levels of violence, not only political violence, but also in the ordinary life of citizens. The homicide rate over the last two decades has been about 70 per 100.000 inhabitants; one of the highest of the world. For the last

three decades, Colombia has been affected by an armed conflict, which has increased in intensity and cruelty.

Second, civilian rule and economical and political stability have not lead to social and economical democratization. Colombia has had exclusionary policies, resulting in a society with deep inequalities and oligarchic rule[8]. For instance, the 20% with higher income receive a revenue which is 26 times higher than the revenue received by the 20% poorest. The Giny coefficient of 0,564 is one of the highest in Latin America, which in turn is one of the world regions with the most inequality[9].

Third, and related to the two previous factors, Colombia has experienced a very serious human right crises, especially since the end of the 1970's. Initially, the biggest problems were arbitrary detentions, torture and unfair sentences. Subsequently, in the 1980s, violations against life became the main concern, given the abrupt increase in massacres, disappearances, torture and murders. For instance, according to the Colombian Commission of Jurists, for the last fifteen years, an average of at least ten persons have died every day for political-related reasons. About four of ten died due to war operations whereas the other six have been murdered by right wing paramilitary forces, leftist guerrilla groups, drug lords or Military or Police Officers[10].

These features make it difficult to define the Colombian political regime. It is not really a consolidated democracy, due to its widespread violence, human right abuses, and deep social inequalities. Nevertheless, Colombia is not a dictatorship nor a simple facade democracy. Popular elections are held periodically to select governmental representatives. Judicial controls and other constitutional checks and balances are more or less effective, at least in some parts of the country. For instance, in March 1987, a Supreme Court decision declared that it was unconstitutional for military courts to investigate and punish civilians. Since that date, not a single civilian has been judged by military courts.

Besides this complex combination of authoritarian and democratic traits, Colombian state formation has been historically very precarious. State institutions have never really be in command of all Colombian territory, some parts of which have been traditionally controlled by private actors. In the last years, the increase of the armed conflict and the very serious economical crises that started in 1997 have aggravated these problems of state formation. According to some analysis, Colombia is not yet a failed state, but it is a collapsing state[11].

Scholars have had trouble characterizing this ambiguous Colombian political system, which is stable and precarious, and also s democratic in some respects, but antidemocratic and authoritarian in others. Some call it a "restricted democracy" or “oligarchic democracy”, whereas others name it a "besieged democracy". Yet others prefer to talk about a "precarious democracy" or a “semi-democratic regime” or even a “collapsing state”. Of course, these different expressions presuppose different analytical approaches and have different political and academic implications[12]. Without going into lengthy discussion about the different characterizations of the Colombian regime, let me just stress that presidential emergency powers, institutionalized as a "state of siege" regime by the Constitution of 1886, has been one of the key elements in explaining the particular evolution of Colombian politics and its legal system.

With this declaration, the President acquired the possibility of promulgating special decrees with force of law (*decretos legislativos*) to restrict some constitutional liberties and to legislate on matters related to public order alteration.

This state of siege regime was created only to face crises. However, in practice, it became an ordinary instrument of government, at least in three senses. First, Colombia has lived under this regime most of the time. Of the 42 years elapsed between 1949 and 1991, Colombia was under state of siege for more than 30 years. Second, large and very important legal reforms were adopted by state of siege decrees, which were then legalized by Congress[13]. In short, the President became a de facto legislator. Last, but not the least, the almost permanent state of siege has posed deep restrictions on constitutional liberties. During the 1970’s, many social protests, like strikes, were suppressed by extraordinary assertions of executive power and freedom of association, movement and expression were encroached upon continuously. Besides, executive decrees adopted during the states of siege not only increased punishments and created new felonies and misdemeanors; they also severely undermined due process guarantees. This is particularly true for the period between 1965 and 1987, when military judges were allowed to investigate and punish civilians. At the end of the 1970´s, about 30% of the felonies established in the Criminal Code were under the competence of martial courts[14].

In sum, the abuse of state of siege powers made Colombia a democracy under permanent emergency. This phenomenon has had deep implications for the nature of the Colombian political and legal systems. Specially it blurred the distinction between legality and illegality and between democracy and authoritarianism. Colombia was not a military dictatorship but was not either

a well functioning democracy, because civilian governments abused constantly of its emergency powers[15].

In 1991, Colombia adopted a new Constitution, replacing the old 1886 Constitution. The 1991 Constitution was not the product of a triumphant revolution. Rather, it grew out of a very complex historical context, as an attempt to come to an agreement to broaden democracy in order to confront violence and political corruption. Under these circumstances, some political and social forces that were traditionally excluded from running for office in Colombia, played a very important role in the Constituent Assembly. These included representatives of demobilized guerrilla groups, indigenous and religious minorities. Thus, of the 70 members of the Constituent Assembly, selected by popular vote in December 1990, 19 came from the AD-M19, two from the Patriotic Union,[16] two indigenous, two non-Catholic Christians, and two representing students and children. Furthermore, three delegates came from guerrilla groups that demobilized after the elections, while the assembly was actually in session.[17] This meant that over 40 percent of the members of the Constituent Assembly did not belong to the Liberal and Conservative parties, which have traditionally dominated Colombian electoral politics. Many saw this as the end of the two-party system of political domination. Furthermore, because of the voting system, which required qualified majorities, and in the absence of a clearly dominant group, all the Assembly's delegate groups had to seek consensus and organize dialogue and transactions to make decisions. Within this framework, many of the delegates identified the following as the main problems contributing to the Colombian crisis: Exclusion, the lack of participation and weakness in protecting human rights. This explains some of the ideological orientations in the 1991 Constitution, namely, the broadening of participation mechanisms, the imposition of social justice and equality duties upon the state, and the incorporation of a Constitution that is rich in rights and new judicial mechanisms for their protection. The 1991 Constitution is not, therefore, in Teitel's words "backward looking" but rather "forward looking" in that, beyond codifying the existing power relations, this legal document tended towards projecting a model of the society to be built[18].

Because of the abuse of state of siege in the past, the new 1991 Constitution tried to limit extraordinary governmental powers. It defined more precisely the situations that allowed the President to declare a "state of exception"[19]. It further stipulated temporal limits for its use, and also incorporated normative limits to governmental powers, especially specific prohibitions (such as the ban to use military justice to try civilians) and the principles of proportionality and subsidiarity. According to these principles, the

Government could only take measures specifically linked to the causes of the perturbation of public order that were strictly necessary to reestablish normality. Besides, these measures must be in accordance with the gravity of the crises and can only be used if ordinary instruments of government are insufficient (See articles 213 and 214 of the Constitution.)

The above discussion prompts some central questions. What has been the role of judicial review in relation to the abuse of emergency powers in Colombia? And, secondly, what has been the effect of the new constitution in this area? These are the topics of focus in the next part of the article.

## 3- Judicial attempts to control presidential emergency powers.

State of siege measures were subjected to judicial review by the Supreme Court, which was the organ that exercised constitutional judicial review under the 1886 Constitution. The 1991 Constitution established a Constitutional Court that took charge of the task of controlling the constitutionality of legislation and emergency decrees. It is useful to compare the activities of these two tribunals related to the control of governmental extraordinary powers in order to understand the peculiarities of Constitutional Court intervention.

### 3.1. The evolution of judicial control over emergency powers in Colombia.

To understand the evolution of judicial control over emergency powers in Colombia, it is important to keep in mind that the president can adopt two different kind of decisions. First, he can declare a "state of siege" (under the 1886 Constitution) or a "state of exception" (under the 1991 Constitution) in order to acquire emergency powers. After this act, he can use the emergency powers to promulgate decrees that restrict liberties, or to legislate in certain matters. Two questions are important: (i) To what extent is the declaration of a state of siege or a state of exception a political question that is or is not out of judicial review? (ii)Once the president has acquired his emergency powers, what has been the scope and intensity of judicial control over the concrete measures taken by the government?

Scholars that have tried to answer these questions, agree that it is possible to distinguish three different periods of judicial review of emergency measures[20].

From the reestablishment of electoral democracy in 1958 after a short military regime- to the beginning of the 1980´s, judicial review was very

lenient. First, the Supreme Court decided that the President´s evaluation of public order was in a certain sense a "political question" that could not be judicially controlled. So, the Supreme Court achieved only formal control of the decree of declaration of a state of emergency; she simply verified if the decree was signed by the President and the members of his Cabinet, but she refused to study if there was or was not a crisis severe enough to justify the government to acquire emergency powers. The result was not only that governments assumed emergency powers based on minor crises but also that states of emergency extended well beyond the time-span of these situations. Just one example: In May of 1965, the government declared a state of siege because of a student protest in Medellín against the American invasion in Santo Domingo. The student demonstration was rapidly controlled, but the state of emergency lasted for over three and a half years. The Supreme Court declared the constitutionality of almost all state of siege decrees, even when the measures had nothing to do with the crises, or restricted very severely constitutional liberties and due process guarantees. For instance, the Supreme Court accepted that martial Courts could try and punish civilians accused of political crimes. A quick review of some of the limitations of fundamental rights upheld by the Supreme Court shows the leniency of judicial control during this period. For instance, Decree 2686 of 1966 established police surveillance on those suspect of subversive activities, authorized censorship on writings that were considered an apology of crime, and imposed a 5 year prison penalty to those who supported subversive activities. Decree 1129 of 1970 banned any meeting of more than three persons. Decree 70 of 1978 authorized, according to its critics, some kind of a secret death penalty because it excluded from criminal investigation any crime committed by the Police or the Army in operations developed against kidnapping, extortion or drug trafficking. Finally, Decree 1923 of 1978, known as the Security Statute, was more or less a copy of similar legislation adopted by Argentina, Brazil and Chile during the military dictatorships.

During the second period from the beginning of the 1980´s until the enactment of 1991 Constitution, judicial review by the Supreme Court became a little more stringent. This tribunal maintained the doctrine that the declaration of a state of siege was subject only to formal control, but was stricter on the judicial scrutiny of the concrete measures taken by the Government during the state of emergency. For instance, the Supreme Court declared void numerous decrees because they did not have any link with the facts presented by the Government as the cause of perturbation of public order[21]. More importantly, the Supreme Court overruled some of its precedents in order to give a stronger protection to due process. In this context, perhaps the most important decision was that of March 1987, which

declared unconstitutional the possibility that civilians were tried and convicted by Martial Courts. This was a significant change in that the use of military justice to investigate civilians had been one of the key elements of the previous state of siege practice.

The third period beginning with the enactment of the 1991 Constitution has continued until now. Judicial control on emergency measures have become stronger because, as I explained before, the new Constitution not only recognizes new fundamental rights, but also poses stricter regulations on the use of emergency powers. In this context, the new Constitutional Court has been more severe in its analysis of government measures taken during any state of emergency. According to García Villegas, only 9% of state of siege decrees were declared void by the Supreme Court between 1984 and 1991, whereas 34% of Internal Commotion Decrees were nullified by the Constitutional Court between 1992 and 1996[22]. The most dramatic change was perhaps the new legal doctrine regarding the control of the declaration of a state of emergency. After issuing its first opinion on that subject, (sentence C-004/92)[23], the Constitutional Court decided that from now on this presidential act would be subject not only to "formal" control but also to "material" or "substantial" control, meaning that it was the duty of the Court to analyze if the crisis was severe enough to justify the declaration of a state of emergency.

In the following analysis I will concentrate on the efforts of the Constitutional Court to exercise a "material" control of the declaration of a state of emergency. I make this restriction because the most controversial and interesting aspect of Colombian judicial review in this matter is the so called "material" control on the presidential declaration of a state of exception.

### 3.2. Efforts of the Constitutional Court to exercise "material" control of the declaration of a state of emergency.

The doctrine of material control entered Colombian constitutional practice quite smoothly. The reason was perhaps that the Court strongly emphasized this new legal doctrine the first time it had to analyze a declaration of a state of emergency. However, the tribunal did not seem to apply this judicial standard in the first cases related to a declaration of a state of emergency.

Sentence C-004/1992 was the first time the Court controlled a declaration of a state of emergency. It was a state of social emergency, that the Constitution had established to face very serious economic crises or natural

catastrophes. The reasons invoked by the Government were general social unrest and a threat of strike by some police officers because of low wages. The government argued that emergency powers were necessary to urgently increase the wages of police officers and other state servants in order to avoid a possible strike. In this sentence C-004/92, the Court vigorously defended a quite strict material control of a state of emergency declaration. It stated that in these situations, the President (i) had to prove the facts on which he relied, and (ii) that he had very little discretion to evaluate if these facts really constituted a crisis serious enough to justify the assumption of emergency powers. The Court further stated that, (iii) according to the subsidiarity principle, the President had to show that ordinary instruments of government were insufficient to face the crisis. The Court concluded that if (i) either the facts were not proven, (ii) or the presidential evaluation about the gravity of the crisis was wrong, (iii) or the government had legal instruments to face the crisis, then the declaration of the state of emergency would be void. In short, the Court in this opinion established a rigorous standard of review. However, it was quite lenient in its application to the concrete case because, as a dissident justice underlined, it was not at all clear that there was a danger of a serious strike. It was less clear that had such a strike taken off, it would have had terrible consequences. Finally, it was not at all clear that the government was deprived of ordinary legal instruments to face the particular situation.

A study of the first four declarations of states of emergency, summarized in Table I in the Appendix, shows that the approach and style of sentence C-004/92 was not unique. In a certain sense, it was reproduced in sentences C-556/92 and C-031/93 that dealt with the first two declarations of Internal Commotion, because also in these opinions, the Court established somewhat stringent judicial standards, but did not apply them to the cases under review [24]. So, as Ariza and Bareto had stressed, in the first two years, the new "material" control was, in a certain sense, just "rhetorical", in that the Court talked about a rigorous theoretical standard, but did not apply it strictly to the situations under judicial scrutiny[25].

In consequence, during this rhetorical phase, the doctrine of material control did not have a real and direct effect to avoid abuses of presidential emergency powers. Nevertheless, it had two positive effects. First, the doctrine of material control was more or less accepted within the Court and even by the Government. For example, in these four decisions, there was not any single dissident opinion on the doctrine of material control. Second, the acceptance of the new doctrine had some influence on the subsequent declarations in the following years. On the next occasions, the Government felt compelled to better justify a new declaration of a state of emergency,

by explaining more exactly what were the facts which constituted the crisis. A comparison of Decree 115 of 1992 and Decree 874 of 1994 is instructive on this point because they dealt with a similar problem, namely, the threat of an immediate release of dangerous prisoners. But the content of the decrees was very different. The first was very poor in its justification, whereas the second tried to explain that this declaration was in conformity with the standards set by the Court.

One obvious question arises: Why was this doctrine of material control, which constituted a radical departure from the attitude of the Supreme Court in the past, so easily accepted, at least in those first years? A possible explanation is that these first steps of the Court –very bold in the theory and doctrine, but quite timid and hesitant in the concrete decision- eventually provoked an ambiguous consensus. On the one hand, those who were very critical of state of siege abuses in the past might have seen the Court´s decisions as a positive step in the right direction. They might have begun to hope that in the future the Court would apply its doctrine and strike down declarations of state of emergency. On the other hand, potential critics of this kind of judicial control might have believed that the Court remain rhetorical. In that context, they might have thought that this could be useful even for the Government, because this "material" control increase the legitimacy of using presidential emergency powers, as long as it remained rhetorical.

This situation also shows the ambiguity of judicial control in general, and specifically of judicial review of emergency measures. Judicial participation in these areas can always be an effective instrument of control or just a mechanism of legitimating de facto decisions. Accordingly, some scholars have been quite critical of Constitutional Court decisions in those years. So, Ariza and Barreto argue that this rhetorical control has increased the prestige of the tribunal without really strengthening the control over emergency powers. In the end, this kind of judicial involvement reinforces emergency powers because the rhetoric of material control legitimate the declaration of a state of emergency without really controlling governmental powers, precisely because of the rhetorical nature of the judicial review[26].

In the course of the next years, the tension between effective control and legitimation increased and the ambiguous consensus discussed above gradually broke down, because the Court decided to exercise a more rigorous and effective material control over emergency powers

In the next two years, the Court struck down two declarations of Internal Commotion, one by President Gaviria (1990-1994) in 1994 and another by

President Samper (1994-1998) in 1995 (see Table 1, Appendix). It is important to underline that the reasons presented by the government to justify these declarations of Internal Commotion were similar to those adduced in the first two declarations in 1992, which were upheld by the Court. Decree 115 of 1992, upheld by sentence C-556/92, talked about the perils of a massive release of dangerous prisoners. The same fact was invoked by Decree 874 of 1994, though sentence C-300 of 1994 nullified this declaration. Similarly, Decree 1793 of 1992 justified the Internal Commotion because of guerrilla attacks and a general increase in violence. Sentence C-031/93 accepted these criteria. But similar reasons were rejected by Sentence C-466/95, which declared void decree 1370 of 1995. Some critics attacked the Court because they saw this change as a serious inconsistency. The Court and its supporters justified this apparent change arguing two things. First, the facts were not identical. Second, and more importantly, they argued that 1992 was still a transitional year (the new Constitution has been enacted in 1991), and this fact should be taken into account in the analysis of emergency powers.

These two decisions of 1994 and 1995 that struck down the declarations of Internal Commotion were accepted by the Government but severely criticized by both Presidents. Then the real discussion over the legitimacy of this material control began. The Court received strong support from trade unions, human rights organizations, several leaders of new political movements, and some scholars, who defended this kind of material control as a necessary instrument to really control emergency power abuses in Colombia. But the Court was also fiercely attacked by Government officials, the business elite, many leaders of the traditional political parties, and some scholars. They argued that this judicial involvement was a form of judicial dictatorship, which made it impossible for the government to control public order.

These discussions attained the Court itself because both decisions were very divided. Sentence C-300/94 was adopted by a 6-3 vote, and three justices explicitly rejected the material control doctrine. In sentence C-466/95, four justices abandoned this doctrine.

The reactions against the Court were not only theoretical. First, President Samper tried, in a certain way, to press the Court to its limits. Sentence C-466/95 struck down the Decree 1370 of 1995, which declared the Internal Commotion, was adopted on October 18$^{th}$ of 1995. Less than two weeks later, after the assassination of Alvaro Gómez, a former presidential candidate and a well known member of the Colombian political elite, the Government declared once more the state of Internal Commotion, for very

similar reasons that the ones invoked in the Decree 1370 of 1995. The challenge to the Court was serious and very difficult, because Gómez´s assassination was strongly condemned by almost all the political forces. Everyone felt that if the Court did not accept this new declaration, a constitutional reform would be proposed very quickly to suppress the possibility for the Court to exercise this material control. But, if the Court decided to uphold this declaration, it would be strongly criticized for being inconsistent and not being capable of resisting political pressures. In this complex situation, the Court took a middle way. Sentence C-027 of 1996 established that this new declaration of Internal Commotion was partly void and partly constitutional. The Court said that the facts adduced in decree 1370 of 1995 and reproduced in this new declaration of Internal Commotion were not sufficient to justify a state of emergency, and in this aspect, the Court maintained some coherence with its previous decision. Nevertheless, the Court accepted that Gómez´ assassination, coupled with threats to murder other political leaders, were facts serious enough to validate the use of emergency powers.

The other attack on the Court was even more direct. Some political leaders together with President Samper proposed an amendment to the Constitution in order to eliminate this material control. After several discussions, and for a confluence of very different factors, too complex to sum up here, the amendment was not adopted[27].

As Table I illustrates (see Appendix), the Court continued to exercise this kind of material control in the next years. Its decisions appear to have had a strong influence. For instance, in spite of a very difficult public order situation, President Pastrana decided not to declare an Internal Commotion State. But the discussion on this judicial intervention of the Court is still very heated. For instance, President Uribe (2002-2006) not only declared a state of emergency but has also has just presented a project to amend the Constitution. One of the points is the suppression of the material control developed by the Court. At the same time, the Court, after a change of several of its justices, is strongly unified in defending material control. So the very recent sentence C-802 of 2002 upheld Uribe´s declaration of Internal Commotion, where all nine justices agreed on the doctrine of material control, even if they accepted a less stringent standard of review.

## 4- **Evaluating and interpreting the Constitutional Court´s efforts.**

This part tries to explain what factors made material control possible and evaluates the real impact of the Constitutional Court's decisions.

### 4.1. How was material control possible?

Bearing in mind that some comparative studies on judicial institutions underline that the courts and the law tend to be conservative and to reflect and protect existing dominant interests, what elements could explain the Constitutional Court's efforts to control governmental abuses? This development seems more difficult to understand in a country like Colombia, which is in the middle of a cruel armed conflict and has a precarious democracy.

To answer this question, it is important to take into account that this "material" control of emergency powers is not an isolated doctrine of the Constitutional Court but makes part of a more general trend of this institution, which has developed a progressive activism in several fields. The Court has been vigorous no only in its attempts to control emergency powers abuses but also in its intention to protect the rights of individuals and disadvantages groups as well. The Court's labors have been far-flung, not only because of the sheer number of rulings and the variety of subjects that it has addressed[28], but also because it has, to a certain degree, surprised Colombian society with its progressive orientation. So, the question about the control of the emergency powers seems to be related to a more general inquiry: How this progressive activism of Colombian Constitutional Court has been possible? There are no easy answers but there are at least some legal, institutional and transitional elements that could explain this evolution[29].

The Constitutional Court was created under the new Constitution approved in 1991. However, Colombia already had a long tradition of judicial control over constitutionality. Going back to at least 1910, the Supreme Court of Justice was granted the binding authority to rule on a law's constitutionality. In consequence, when the Constitutional Court began operating in 1992, the Colombian legal and political culture was already very familiar with judicial review, to the point that few in the Colombian judicial community thought it strange that the Court had the power to annul governmental decrees or laws approved by Congress. The Court could therefore act vigorously, without fear that the executive branch or the political forces would decide to shut it down, as has happened in other countries in which the first task that constitutional courts have faced has been to win legitimacy for its underdog role.

Secondly, the procedural design has helped this active intervention, because the Court has to automatically control any emergency measure adopted by the Government. Besides, in the other fields, access to

constitutional justice is very easy and not costly. For instance, the 1991 Constitution created the *tutela*, by virtue of which any person may, without any special requisites, directly request that a judge intervene to protect his or her fundamental rights. It is relatively easy for citizens to transform a complaint into a legal issue that the constitutional justice system must decide upon and within quite a short period of time. And, as has been demonstrated in comparative legal studies, with greater access to the courts comes greater political influence for the courts[30].

Thirdly, the procedural design of constitutional justice also confers enormous legal power on the Court. In practice, thanks to its ability to annul, for constitutional reasons, other judges' decisions, the Constitutional Court has been gained prominence as a super-court that lords over the other high courts. This fact also facilitates the Court´s activism in that comparative sociology demonstrates that there tends to be more judicial activism in countries where most of the authority is concentrated in a single supreme court, such as in the United States. This contrasts to other countries, such as France where this power is distributed among different courts and jurisdictions[31].

Fourth, the Constitutional Assembly of 1991 and the President of that period saw the Constitutional Court as one of the most important institutions of the new Constitutional order. It received then considerable financial and technical support to develop its activities.

Beyond these legal and institutional elements, two political factors have stimulated the Court's activism: (i) The crisis in representation and (ii) the weakness of the social movements and opposition parties.

Colombian's disenchantment with politics has led certain sectors to demand answers from the judicial branch to problems that, in principle, should be debated and resolved by means of the people's participation in the political sphere. This phenomenon is not exclusive to Colombia[32]. But, in the case of Colombia, the weakness of the mechanisms for political representation runs deep, for which reason there is greater temptation to substitute judicial for political action. On many occasions, what has taken place is not that the Court takes on other powers, but rather that it has stepped in to fill the vacuum that they have left. This intervention appears legitimate to broad sectors of society that feel that at least one power exists that acts progressively and ably.

Besides, Colombia has a historical tradition of weak social movements, compared to other Latin American countries. And not only are these

movements not strong, furthermore, in recent years, violence has considerably raised the costs and risks of their actions, in that many leaders and activists have been murdered. These two factors –-historical weakness and growing risks— tend to strengthen the judicial role, especially that of the court. Since access to constitutional justice is cheap and easy, and the constitutional judges tend to adopt progressive positions, it is natural that many social groups are tempted to make use of legal arguments rather than recurring to social and political mobilization, which has enormous risks and costs in Colombia.

All of the above may explain the court's activism but an obvious question remains: why did this court take on a progressive role when it could have undertaken activism of another nature?[33]. To answer this question, the characteristics of the constitutional transition take on considerable relevance.

As we have seen, the 1991 Constitution is a forward looking document that tries to overcome some of the problems of the past. This explains the strict regulation of the emergency powers in this Constitution, which also is generous in the protection of human rights. The court's active intervention in developing the progressive components of this Constitution would not have been necessary if the political forces themselves had taken on this task. However, what took place was that many of the social and political actors that dominated the 1991 Constituent Assembly were considerably and rapidly weakened in the following years. The forces that had dominated Congress and the electoral scene since 1992, although not being clearly enemies of the 1991 Constitution, were not committed to cultivating it. Over the years, the Court has therefore, gradually, come to present itself as the body that implements the freedoms and social justice values set out in the Constitution, which has afforded it with significant legitimacy in certain social sectors. This explains the fact that the Court has won a certain amount of prestige from social sectors and groups that are very critical of other state institutions, and that perceive the Court's decisions to constitute a real opportunity for truly protecting their rights.

To sum up, some of the first justices in the Court decided to take advantage of the political context to promote the Constitution's progressive content. They succeeded in doing so, at least at the legal level, though with great effort and difficulty. During these first years, the personality of some of these justices played a very significant role in shaping the progressive orientation of the Court. In this way, step by step, a sort of alliance has grown between the Constitutional Court –or at least between some justices— and certain social sectors in order to defend and develop the

progressive values enshrined in the 1991 Constitution[34]. Later on, this progressive orientation became not only something like a hallmark for the Court but also one of its main sources of legitimacy and support. A social understanding developed that the Court´s mission in the political system was to protect and expand the progressive content of the Constitution. This institutionalist idea of the role of the Court has been so important –even for the justices themselves- that in 2001 seven of the nine justices were replaced, because their eight year period was completed, but the general orientation of the Court's has not changed[35].

Of course, this progressive orientation provoked also strong opposition from other sectors. In particular, businessmen's groups and the government, attack the Court's jurisprudence, calling it populist and ingenuous, and argue that Colombia is slipping into a sort of judge's government in which the Court could become a sort of super-legislature. These actors have not limited themselves to reproaches, they have also, so far unsuccessfully, attempted to pass numerous reforms to eliminate the Court or at least seriously to curtail its power. The Court has been on the knife's edge; on some occasions, while the Government, some sectors of Congress and representatives of the business elite have tried to bring about constitutional reforms to limit the Court's power, the representatives and leaders of some social movements have showered it with praise and support.

However, it is quite conceivable that things could have been different. Arguably, some purely causal and timely incidents had a decisive influence on the developments discussed in this article. In accordance with chaos theory, a slight variation in certain decisions could have had enormous consequences for the unfolding of constitutional jurisprudence in Colombia. For example, some of the progressive decisions were taken by a narrow five to four margin. The slightest change in the Court's composition and the opponents would have triumphed. In 1992, the Senate elected some judges considered to be progressive by a narrow margin over other candidates with more conservative political and legal orientations[36]. Had only one of these progressive judges not been elected, it is very likely that some of the Court's jurisprudence would never have come into existence. Also, at other times, attempts to suppress the Court's significant powers were on the verge of succeeding. But, to date, the court has managed to hold onto its power and progressive activism, and has maintained the doctrine of material control. Nevertheless, it is not at all sure that the Court is going to be able to keep this attribution in the future. The last governments were weak in terms of legitimacy and popular support. It was costly for them to confront openly a well-accepted Court. Today the situation is different. The current president is quite popular and public

opinion is in favour of harsh governmental measures against the violence and the guerrilla. The government´s proposal to amend the Constitution in order to suppress the material control over the declaration of a state of emergency could gain enough political support to be approved.

My hypothesis to explain the Court's active intervention in the control of governmental emergency powers can be synthesized as follows: The design of the Colombian Constitutional Court and the legal culture have made the Court's significant activism institutionally possible. The representation crisis and the weakness of the social movements are conducive to the use of legal mechanisms by certain social actors. The 1991 Constitution also stimulates a progressive vision by the Court, which because of the vacuum left by the weakening of the constituent forces, tends to see itself as a power that is responsible for implementing the values enshrined in the Constitution. The Court's progressivism is made possible, in turn, by the relative weakness until now of the forces that oppose it and the failure of the attempts at Constitutional counter-reform.

**4..2 Possible effects of material control.**

The most important point in evaluating the actual influence of the Constitutional Court decisions is to see if the introduction of substantial control over the declaration of a state of exception has implied any difference concerning the time during which Colombia has lived under an emergency regime. I have therefore calculated how many months of the different presidential periods the Colombian people have had to live under a total state of siege or a State of Internal Commotion. I have restricted my analysis to only these two kinds of emergency regimes because they have generated the most serious abuses and threats to civil liberties and the rule of law.

The tables and figures in the Appendix illustrate that there has been a substantial change since the Constitutional Court decided to introduce material control over the declaration of a state of exception.

According to Table II, in the seventies and eighties Colombians literally lived under a permanent emergency regime. This situation changed dramatically during the 1990. For instance, Barco´s government elapsed under a total state of siege regime, whereas, during Andrés Pastrana government, there was no declaration of an Internal Commotion State (see Figure 1).

These findings are summarised in Table III, which presents the time elapsed under an emergency regime in the different decades. The impact of the introduction of material control by the Constitutional Court appears to be considerable, since the time Colombians lived under an emergency regime fell from 80% in the 1980 to less than 20% in the 1990 (see Figure 2).

One conclusion seems clear. The material control of the declaration of a state of emergency has been instrumental in reducing constitutional "anormality" in Colombia. And that is important because the abuse of emergency powers has distorted Colombian democracy. But this positive point has to be balanced against some negative impacts of this judicial intervention. First, these decisions have implied high costs for the Court itself. Several attempts to curtail Court powers, or even suppress the institution, has been made.

Second, some scholars, who are sympathetic to Court efforts to make the government accountable, have nevertheless strongly criticized the Court´s opinions on this matter. They say that the Court has not been able to really develop a consistent doctrine or a clear judicial standard to exercise the material control on a declaration of a state of emergency[37]. The result is that it is not easy to predict, with legal arguments only, the results of the judicial review in this field. The obvious question that arises is if this possible doctrinal inconsistency of Colombian Constitutional Court could be corrected, or is a shortcoming that is inevitably linked to the nature of the judicial review on emergency regimes.

Third, this intervention of the Constitutional Court is an expression of what could be called "dramatic justice", that is, the intervention of the judicial system in events highly followed by the media. Some times, a form of dramatic justice can play a positive role for the consolidation of democracy because of its symbolic effect. But the risk of dramatic justice is that it can hide the problems of the everyday or "routinary" justice, that can be more important for the life of the citizens. And, in Colombia, the great political salience and visibility of the Constitutional Court contrasts sharply with the inability of the routinary justice to respond to the demands arising from social conflicts[38]. If the judicial system as a whole does not raise its performance to an acceptable level of efficiency to become actually accessible to most citizens, then the highly visible interventions of the Constitutional Court will prove insufficient for the effective protection of rights in Colombia.

Last but no least, during this decade of material control, the public order situation has worsened in Colombia and armed conflict has increased. Even if it is very difficult to establish a clear link between material control and the worsening of the public order situation, some critics argue that Constitutional Court involvement in this field is in part responsible for the aggravation of the Colombian crises.

## 5. Some provisional conclusions.

Colombian experience might be useful in two different fields. In empirical terms, it is an interesting case study to test different approaches about judicial decision-making, because Colombian evolution is not easy to explain.

More important, in normative terms, Colombian case could teach some lessons about the possibilities, risks and limits of judicial review as an instrument to avoid the abuse of emergency powers in a democracy. First, it shows that some kind of judicial review is possible and can have real impact on the control of the government. It also shows that several particular and difficult conditions must be resolved to make possible this kind of control. And finally, the Colombian case makes evident that judicial intervention in this field has high costs. The question that remains open is, if we take into account all these costs, is it still worth trying to establish some judicial control over emergency powers? My answer, based on the Colombian experience, is yes. But one should bear in mind that the Colombian experience suggest that the evolution of this judicial control is risky. For that reason, it could be very useful to place the Colombian experience in a comparative perspective in order to better understand what are the possible factors to reduce those risks.

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## APPENDIX

Table I
Declarations of states of emergency after 1991 Constitution

| Date and Decree | Nature | Facts invoked by the Government | Court´s decision |
|---|---|---|---|
| Decree 333 of 24 Feb 1992 | Social Emergency | Social unrest and threat of strike by the Police | C-04/92. Upheld |
| Decree 680 of 26 April 1992 | Social Emergency | National electric crises because of a severe drought | C-447/92 Upheld |
| Decree 115 of 10 July 1992 | Internal Commotion | Threat of an immediate release of dangerous prisoners | C-556/92 Upheld |
| Decree 1793 of 8 November 1992 | Internal Commotion | Guerilla attacks and threats, and general increase in violence | C-031/93 Upheld |
| Decree 874 of 1 may 1994 | Internal Commotion | Threat of an immediate release of dangerous prisoners | C-300/94 Void |
| Decree 1178 of June 9 of 1994 | Social Emergency | Earthquake and avalanches | C-366/94 Upheld |
| Decree 1370 of August 16 of 1995 | Internal Commotion | General increase in violence and criminality and guerrilla attacks | C-466/95 Void |
| Decree 1900 of November 2 of 1995 | Internal Commotion | Violence, terrorist acts and assassination of the political | C-027/95 Void partially and |

| | | | |
|---|---|---|---|
| | | leader Gomez Hurtado | upheld partially |
| Decree 80 of January 13 of 1997 | Social Emergency | Crisis in payment balance, revaluation of Colombian currency and fall in central bank reserves | C-122/97 Void |
| Decree 2330 of Nov 16 of 1998 | Social Emergency | Crisis in financial and banking system. | C-122/99 Void partially and upheld partially |
| Decree 195 29 Jan of 1999 | Social Emergency | Earthquake | C-216/99 Upheld |
| Decree 195 1 Aug of 2002 | Internal Commotion | Terrorist attacks, generalized guerrilla threats against many mayors and very high violence. | C-802 /02 Void partially and upheld partially |

Source: Author´s analysis of decrees and court´s decisions.

Table II
Emergency in different presidential periods
(Time elapsed in total state of siege or total Internal Commotion)

| President | Number of months in emergency | Percentage of the period in emergency |
|---|---|---|
| 1 Lleras Camargo 58-62 | 4,0 | 8,3 |
| 2 Valencia 62-66 | 14,5 | 30,2 |
| 3 Lleras Restrepo 66-70 | 30,0 | 62,5 |
| 4 Pastrana Misael 70-74 | 39,0 | 81,3 |
| 5 Lopez 74-78 | 34,0 | 70,8 |
| 6 Turbay 78-82 | 47,0 | 97,9 |
| 7 Betancur 82-86 | 27,0 | 56,3 |
| 8 Barco 86-90 | 48,0 | 100,0 |
| 9 Gaviria I- 90-91 | 11,0 | 100,0 |
| 10 Gaviria II 91-94 | 14,6 | 39,5 |
| 11 Samper 94-98 | 9,0 | 18,8 |
| 12 Pastrana Andrés 98-02 | 0,0 | 0,0 |

Source: Based on an analysis of the decrees that declared states of emergency

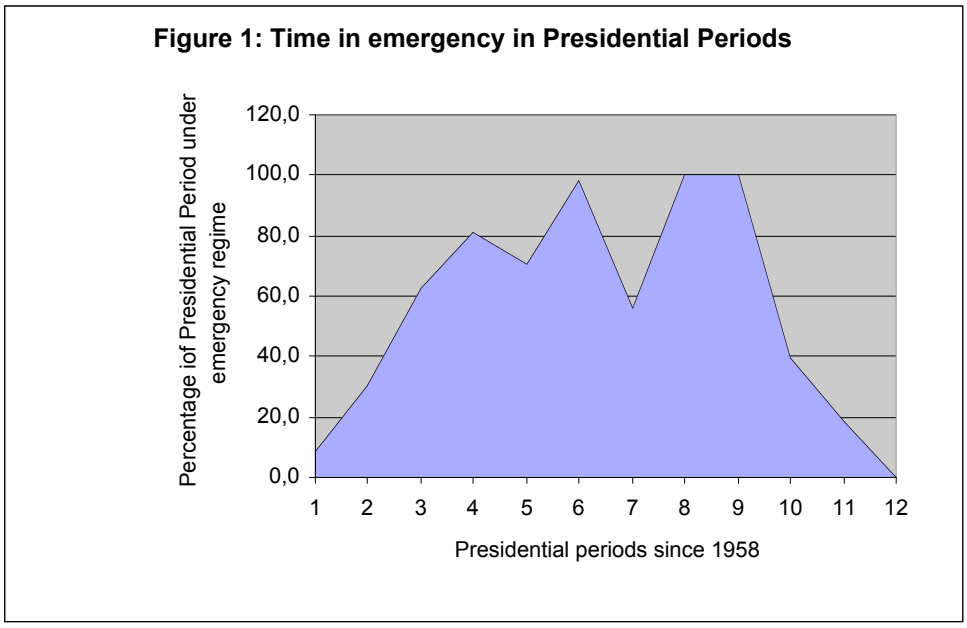
Note: Gaviria´s Presidential period is divided in two, because of 1991 Constitution

Table III
Emergency in different decades

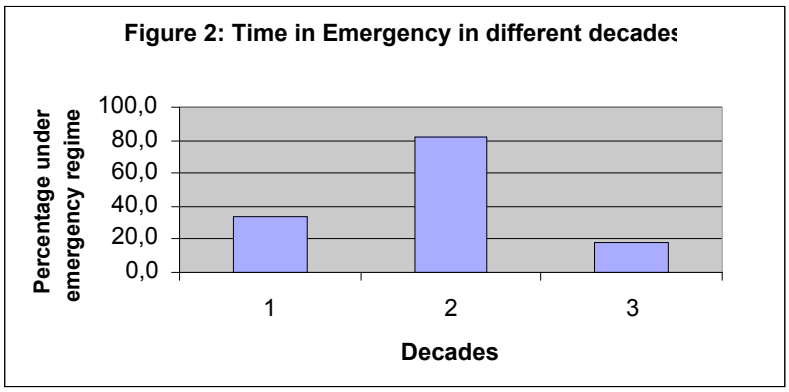
| Decades | Number of months in emergency | Percentage of the decade in emergency |
|---|---|---|
| | 48,5 | 33,7 |

| | | |
|---|---|---|
| 1958-1970 | | |
| 1970-1991 | 206,0 | 82,1 |
| 1991-2002 | 23,6 | 17,5 |

Source: Based on an analysis of the decrees that declared states of emergency




Source: Based on Table II




Source: Based on Table III.

**NOTES**

[1] For the history of the abuse of emergency powers in Colombia, see part 2 of this paper, and Ariza et al, Barreto, Gallón and García Villegas.
[2] For some classical approaches to the concept of constitutional dictatorship, see Friedrich: 246 ss and Rossiter: 7. The essence of this institution is that it is a mechanism of concentration of power and restriction of liberties (and in that sense it is a dictatorship), but with the goal of defending the constitutional order and not of destroying it (in that sense it is still a constitutional regime).
[3] This stance has been adopted by some Latin-American scholars and human rights activists, due to the extensive abuse of emergency powers in this region. For instance, in a workshop in Montevideo in 1986, many participants were in favor of "promoting a legal and political consensus to exclude from constitutional texts any norm that authorizes any kind of emergency powers". See Coloquio de Montevideo. Declaración final in García Sayán: 58.
[4] See for instance Article 4 of the International Covenant on Civil and Political Rights and Article 27 of the Interamerican Convention on Human Rights. See also the General Comment 5 adopted by the Human Rights Committees and the so called "Syracusa Principles", on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/Annex 4).
[5] For a presentation of the different theses concerning judicial review in times of constitutional crises, see Blur, and Barreto, part II.
[6] Burt: VI-39.
[7] Deas, 1973:29
[8] See Tourraine, 1976:85
[9] See Garay:28.
[10] Comisión Colombiana de Juristas, 2000: 9.
[11] Se Ann Mason, 2001.
[12] For a good analysis of these different approaches to the Colombian crises and their implications, see Ana María Bejarano and Eduardo Pizarro. 2001.
[13] See Gallón, Uprimny 1999: 25 and García Villegas: 334
[14] See Gallón: 139.
[15] See Gallón: 121 a 127 and García Villegas: 359
[16] The AD-M19 was a political group that grew out of the peace process with the M-19 guerrilla group. The UP (Patriotic Union) was a left-leaning group that was severely targeted by paramilitary violence.
[17] For information on the Constituent Assembly, see Jaime Buenahora (1992).
[18] See Teitel, 1997: 2014
[19] According to the 1991 Constitution, extraordinary powers are called "states of exception" (*estados de excepción*) and are of three different types: (i) The "external war state", in case of an international armed conflict; (ii) the "internal commotion state" in case of very serious perturbations of internal public order; and (iii) the "social and economical emergency state", in case of a very serious economical crises or a natural catastrophe. Nevertheless, I will use the term "state of emergency" rather than a "state of exception", because the latter is not much used in the English language.
[20] See Gallón, García Villegas, Ariza et al, and Barretto.
[21] According to García Villegas (2001: 336), 10 out of 237 decrees were declared unconstitutional because of absence of "link" (*conexidad*) with the perturbation of public order.
[22] See García Villegas, 2001: 370. This quantitative data has not in itself a clear meaning, because the orientation of the decisions in judicial review depends not only on the severity of the judicial control but also on the nature of the measures taken by the government. But it is nevertheless realistic to assume that the government during both periods took very similar and harsh measures. If that is correct, the quantitative data is a valid indicator to express a difference in the severity of judicial control.

[23] Constitutional Court decisions are identified by a number that corresponds to the sequential order in a given year; and a second number that identifies the year itself. Thus, sentence C-004/92 is the fourth sentence that the court issued in 1992.
[24] On the other hand, almost all commentators agree that the second social emergency was justified, because Colombia faced a very serious electricity crises in the whole country.
[25] Ariza and Barreto, 2001: 163.
[26] Ariza and Barreto, 2001: 158.
[27] On the preliminary attempts to restrict the powers of the court, see Juan Gabriel Gómez, 1995.
[28] For a general overview of the Court's work, see Manuel José Cepeda (1998:91), according to whom, "almost all key issues of modern constitutional law have been dealt with by the court." For an analysis of the progressive potential of the rulings of the Court, see Uprimny and Garcia (2002).
[29] For this point, I rely extensively on Uprimny and García Villegas, 2002.
[30] See Jacob *et al,* 1996: 396
[31] See Jacob *et al,* 1996:389
[32] See Santos *et al*, 1996.
[33] This question obviously supposes not identifying activism and progressiveness of the courts, since there may be conservative activism, such as in the US Supreme Court in the early 20th century.
[34] See Cepeda, 1998: 76
[35] See Gillman: 83 on the importance that the perceived mission of an institution has on the behaviour of its members.
[36] Nine justices form the Court and they are selected by the Senate, for a period of eight years, from lists of three candidates made by the President, the Conseil d´Etat and the Supreme Court
[37] See García Villegas: 358, Ariza and Barreto: 171
[38] The distinction between dramatic and routinary justice has been proposed by Santos et al, 1996. It has been used also to study Colombian judicial system. See Rodríguez et al.