

Legal Protection of Elderly People in Risaralda (2016-2018) from the Perspective of the Social Rule of Law *

[English version]

Protección jurídica de los adultos mayores en Risaralda (2016-2018) desde la perspectiva del Estado Social de Derecho

Proteção legal dos adultos mais velhos em Risaralda (2016-2018) da perspectiva do Estado de direito social

Received February 22, 2021. Accepted May 3, 2021.

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› To cite this article:

Hurtado-Maya, Alexandra;
Heredia-Ríos, Elkin-Andrés
(2022). Legal Protection of
Elderly People in Risaralda (2016-
2018) from the Perspective of the
Social Rule of Law.
Ánfora, 29(52), 207-231.

<https://doi.org/10.30854/anfv29.n52.2022.801>

Universidad Autónoma de
Manizales. L-ISSN 0121-6538.

E-ISSN 2248-6941.

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Abstract

The main objective of this research article is to analyze the effectiveness of the regulations and

* Article product of Project P130-2018, Call 009, "Guarantee of the Minimum Subsistence of Older Adults in Risaralda, 2016-2018", Research Group *Orbis Iuris*, Fundación Universitaria Autónoma de las Américas, Pereira. The project did not receive external financing.

The investigators declared no conflicts of interest.

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jurisprudence for the protection of the minimum subsistence of elderly people in the department of Risaralda during the period 2016-2018. Aging is a natural human process in which there is a deterioration of psychomotor and inter-subjective capacities that, in terms of quality of life and dignity, generates a condition of vulnerability and therefore an urgency for care and attention. This reality makes it necessary to demonstrate the fulfillment of objectives by the Colombian State in relation to this challenge. Insofar as it is the guarantor of the rights related to the protection and inclusion of the elderly as a special group in a society that defines itself according to the principles of the social rule of law and redistributive justice, the State must strive to guarantee the minimum level of subsistence requirements of this population. **Objective:** to determine the level of protection of the minimum subsistence of elderly people as subjects of special constitutional protection in relation to public policy for aging and older adults attached to public institutional care centers in the department of Risaralda. **Methodology:** the selected approach was socio-legal with a mixed method. The data collection techniques and instruments were applied based on the analysis and review of documentary sources of the standard and jurisprudence. The initial categories proposed are "minimum subsistence," "fundamental rights" and "social justice." **Results:** it was evidenced throughout the methodological application that, although in the legislation there is a whole regulation of norms in protection of the minimum subsistence and the rights of said population, it is not evident how well they are cared for, since the different statistics show that the best protected older adults, with a good quality of life are those who are part of private homes. **Conclusions:** there is no coverage regarding the guarantee of the minimum subsistence for seniors who are in vulnerable conditions in public homes, as a series of legal and procedural requirements are established for access to government aid, and most do not comply with said required parameters, which in some way evidences an affectation of the constitutional principles and rights on the part of said state function.

Keywords: Elderly people; Minimal standard of living; Minimal subsistence; Human rights; Constitutional protection; Inclusion.

Resumen

El presente artículo de investigación tiene como objetivo principal analizar la efectividad que ha tenido la normativa y jurisprudencia para la protección del mínimo vital de los adultos mayores en el departamento de Risaralda durante el período 2016-2018. El envejecimiento es un proceso natural del ser humano en el que ocurre un deterioro de las capacidades psicomotoras e intersubjetivas que, en términos de calidad de vida y dignidad, genera una condición de vulnerabilidad y por

ende de urgencia de cuidado y atención. Esta realidad hace necesario evidenciar el cumplimiento de objetivos por parte del Estado colombiano en torno a este reto. En la medida en que es el garante de los derechos relacionados con la protección e inclusión de los adultos mayores como grupo especial de una sociedad que se autodefine según los principios del Estado social de Derecho y de una justicia redistributiva, el Estado debe propender por la garantía del mínimo vital de esta población. **Objetivo:** determinar el nivel de protección al mínimo vital de los adultos mayores como sujetos de especial protección constitucional frente a la política pública para el envejecimiento y de los adultos mayores adscritos a los centros de atención institucional públicos en el departamento de Risaralda. **Metodología:** el enfoque seleccionado fue el socio-jurídico con método mixto. Las técnicas e instrumentos de recolección de información se aplicaron a partir del análisis y revisión de fuentes documentales de la norma y jurisprudencias. Las categorías iniciales planteadas son “mínimo vital”, “derechos fundamentales” y “justicia social”. **Resultados:** se evidenció durante toda la aplicación metodológica que, aunque en la legislación se encuentra plasmada toda una regulación de normativa en protección al mínimo vital y los derechos de dicha población, no es evidente su buen cuidado, pues las diferentes estadísticas muestran que los adultos mayores mejor protegidos y con una buena calidad de vida son aquellos que hacen parte de hogares privados. **Conclusiones:** no hay una cobertura a la garantía del mínimo vital para los abuelos que se encuentran en condición de vulnerabilidad en hogares públicos, ya que se establecen una serie de requisitos legales y procedimentales para el acceso a las ayudas gubernamentales, y la mayoría no cumplen con dichos parámetros requeridos, lo que de alguna manera evidencia una afectación a los principios y derechos constitucionales por parte de dicha función estatal.

Palabras-clave: Adultos mayores; Mínimo vital; Derechos humanos; Protección constitucional; Inclusión.

Resumo

O principal objetivo deste artigo de investigação é analisar a eficácia dos regulamentos e jurisprudência para a proteção do mínimo vital dos adultos mais velhos no departamento de Risaralda durante o período 2016-2018. O envelhecimento é um processo natural do ser humano em que há uma deterioração das capacidades psicomotoras e intersubjetivas que, em termos de qualidade de vida e dignidade, gera uma condição de vulnerabilidade e, portanto, uma urgência de cuidado e atenção. Esta realidade torna necessário demonstrar o cumprimento de objetivos por parte do Estado colombiano em relação a este desafio. Na medida em que é o garante dos

direitos relacionados com a proteção e inclusão dos idosos como um grupo especial numa sociedade que se define a si própria de acordo com os princípios do Estado social de direito e da justiça redistributiva, o Estado deve esforçar-se por garantir as necessidades vitais mínimas desta população. **Objetivo:** determinar o nível de proteção do mínimo vital dos adultos idosos como sujeitos de proteção constitucional especial em relação à política pública para o envelhecimento e adultos idosos ligados a centros públicos de cuidados institucionais no departamento de Risaralda. **Metodologia:** a abordagem selecionada foi a sócio-jurídica com um método misto. As técnicas e instrumentos para a recolha de informação foram aplicados com base na análise e revisão de fontes documentais de normas e jurisprudência. As categorias iniciais propostas eram "mínimo vital", "direitos fundamentais" e "justiça social". **Resultados:** Ao longo da aplicação metodológica foi evidente que, embora a legislação contenha todo um conjunto de regulamentos para a proteção do mínimo vital e dos direitos desta população, não é evidente que sejam bem tratados, uma vez que as diferentes estatísticas mostram que os adultos idosos mais bem protegidos e com uma boa qualidade de vida são aqueles que fazem parte de lares privados. **Conclusões:** não há cobertura da garantia do mínimo vital para os avós que se encontram em condições de vulnerabilidade nos lares públicos, uma vez que é estabelecida uma série de requisitos legais e processuais para o acesso às ajudas governamentais, e a maioria deles não preenchem estes parâmetros exigidos, o que, de alguma forma, demonstra uma afetação aos princípios e direitos constitucionais por parte desta função estatal.

Palavras-chave: Idosos; Vital mínimo; Direitos humanos; Proteção constitucional; Inclusão.

Introduction

*"In motion is life and in activity lies happiness."
-Aristotle.*

The main objective of this article, the product of a research project, is to analyze the effectiveness of the regulations and jurisprudence for the protection of elderly people that guarantees the protection of the minimum subsistence in the city of Pereira during the period 2016-2018. The study reflects the importance and effectiveness of legislation for this population, which, due to their physical and psychological situations and state of abandonment, makes them subjects of special constitutional protection, giving them a preferential and legitimate connotation when it comes to asserting their fundamental rights.

In a social state under the rule of law such as Colombia (Heller, 2012), since the 1991 Constitution, it has been essential to have legislative coverage that protects its citizens, especially when they are in a state of dependence and defenselessness. The connotation of special protection will make it possible not only to legitimize the social state, but also to face the challenge of inclusion in a society in the process of legal and social modernization.

For the construction of this text, it was necessary to carry out a state of the art study based on a literature review of several research articles (Cardona et al. 2018), (Correa, Suárez, Rúa, 2017), (Triana, 2016), (Castellanos, 2017), (Lathrop, 2009), (Navarro, 2011). Similarly, the article was normatively based on John Rawls' *La Theory of Justice* (1971), which establishes the importance of inclusion in a democratic society composed of free and equal persons, in which differences are respected and the development of cycles, as much as for subsistence as for a guarantor. The objective of the research was to show the importance of materially guaranteeing the minimum –in constitutional terms – for society to have a political and moral balance. However, in order to satisfy this need, fair principles are required on which the entire legal functioning of a country, in the specific case dealt with, a configuration as a social state under the rule of law, must be based.

The following is a description of the research problem, which is mainly based on official statistics regarding the protection of the elderly, as well as on the most relevant normative theory regarding the phenomenon under study, such as Rawls' theory. This will be followed by a description of the methodology used, an analysis of the results and, finally, reflective and retrospective conclusions.

Approach to the Problem from a Legal Development Point of View

Since the 1991 Constitution, the Colombian State has faced the challenge of guaranteeing the rights of all citizens based on a nation founded on and transforming principles of equality, solidarity, and democracy. The social rule of law aims to eradicate social and economic deprivation in order to improve the quality of life of the Colombian population:

It requires making an effort to build the indispensable conditions to ensure a decent life for all the country's inhabitants within the economic possibilities available to them. The purpose of empowering the individual requires the authorities to act effectively to maintain or improve the standard of living, which includes food, housing, social security and the scarce financial means to function in society. (Constitutional Court, T426, 1992)

Taking into account the above, the Constitutional Court in several of its rulings establishes the need to protect the rights of certain populations due to their conditions of vulnerability in Colombian society. In this regard, since Ruling T-736 of 2013, it is determined as a priority to guarantee the rights of people in a state of defenselessness due to physical, psychological and economic causes, which has caused facts of positive discrimination:

In the case of subjects of special protection, this Corporation has held that the reinforced protection of subjects of special constitutional protection is based on the recognition by the Constituent Assembly of 1991 of the formal and real inequality to which they have historically been subjected. (Constitutional Court, T-736, 2013)

In this same ruling, the court identifies children, mothers who are heads of households, people with disabilities, the displaced population, the elderly, and all those persons who, due to their situation of weakness, are in a position of inequality with respect to other Colombian citizens, as populations of special protection. The identification of differential protection approaches to certain populations, or as they are known, to minorities, can be based on the need for the development of universal law, whose specific objective is the guarantee of human rights, such as human dignity and the minimum subsistence.

The perspective of the subjects of special protection at the international level, is not alien to the considerations of the Court, since the United Nations (UN) in the subcommission for the protection of minorities defines a minority group as:

A group numerically inferior to the rest of the population of a State, in a non-dominant situation, whose members, subjects of a State, possess from an ethnic, religious, or linguistic point of view a characteristic that differs from those of the rest of the population and even implicitly manifests a feeling of solidarity in order to preserve their culture, traditions, religion or language. (ONU, 2010, p.568)

One of the population groups identified as an object of protection and a minority in Colombia are the elderly. In the Colombian legal system, elderly is understood as a citizen who begins to age at 60 years of age, according to Law 1251 of 2008. The motives for its protection are based on the concept of old age, understood as the process of acquiring needs, disabilities, labor losses, and human strengths, which generates the need to defend and eradicate discrimination and social abandonment.

However, when making a historical review of the concept of old age, it can be seen that since the 17th century, there was a small number of adult or elderly population. A thirty-year-old was already considered to be an elderly person. However, thanks to scientific and technological advances: the creation of medicines, cures for diseases and new types of diet for the entire population, longevity has been increased. Starting in the 19th century, a series of qualities became evident among the elderly, and the old people began to be classified as that conservative, wealthy, and wise population, which generated respect from other citizens. Despite the above, since the emergence of the industrial revolution and the displacement of workers by machines, elderly populations began to become "unproductive" populations, which generated rejection in the working environments. From that moment on, discrimination against the elderly by society and institutions can be identified.

For this reason, at the international level, policies have been generated to strengthen elderly population, and the protection of said population group has been matter of discussion in our context since 1991. In addition, the Organization of American States (OAS) began to speak of the principles of the United Nations in favor of the elderly:

Recognizing the enormous diversity of situations of the elderly, not only among different countries, but also within each country and among people themselves, which requires equally diverse political responses, aware that in all countries it is increasingly greater the number of people who reach an advanced age and in better health than what has been happening up until now. (ONU, 1991, pp.1)

Based on this international recognition, several regulations have been generated that allow the protection of the elderly in all their stages of aging: *the Proclamation on Aging of 1992 (UN, 1992)*, *the Regional Implementation Strategy for Latin America and the Caribbean of the Madrid International Plan of Action on aging (ECLAC, 2004)*, *the Declaration of the Second Intergovernmental Conference on aging in Latin America and the Caribbean – Brasilia Declaration of 2007 (ECLAC, 2007)*, *the Plan of Action of the Pan American Health Organization on the health of the elderly, including active and healthy aging (PAHO, 2018)*, and *the Charter of San José on the rights of the elderly in Latin America and the Caribbean 2012 (ECLAC, 2012)*. All of these are due to a specific motivation, namely, that this population has gradually become one of the most vulnerable in this century, a fact that is evident in its little connection to the labor market, its social rejection, its lack of influence on financial issues, pathologies that arise from poor health and life habits and physical deterioration, among others.

According to data from the 2017 revision of the report *World Population Perspectives* (ECLAC, 2020) the number of elderly population is expected, that is, those aged 60 and older, will double by 2050 and triple by 2100. This population will increase from 962 million in 2017 to 2.1 billion in 2050 and 3.1 billion in 2100. Globally, this population group is growing faster than the youngest group of people:

The world's population is aging rapidly: between 2000 and 2050, the proportion of the planet's inhabitants over 60 years of age will double, from 11% to 22%. In absolute numbers, this age group will grow from 605 million to 2 billion over the course of half a century. Demographic change will be faster and more intense in low- and middle-income countries. For example, it took 100 years for the population of 65 years and over in France to double from 7% to 14%. On the contrary, in countries such as Brazil and China, this doubling will occur in less than 25 years. (World Health Organization [WHO], 2019, Parr. 1-2)

In Colombia, as in other countries, the social phenomenon of aging is found, and the rates of the population over 60 years old have increased significantly:

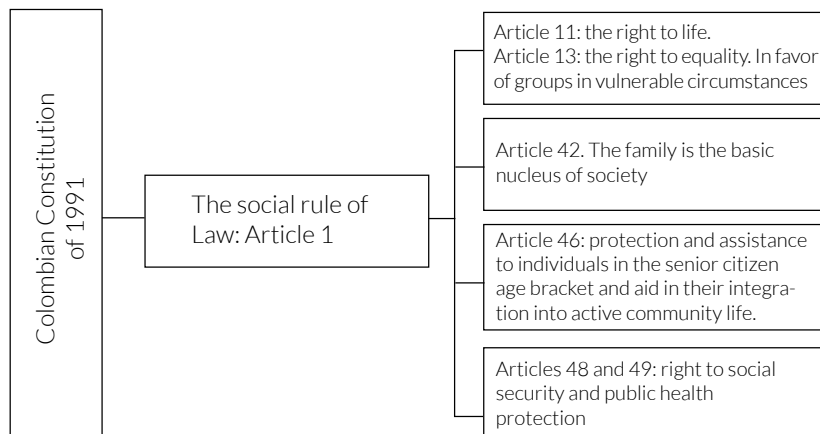
These [indicators] currently represent almost 11% of the Colombian population—some 5.2 million people—and this group is projected to increase to 23%—some 14.1 million by 2050—, with a higher percentage of older women. Additionally, in 1995 the country's aging index was that of 13.7 people over 65 years old for every 100 people between 0 and 14 years old, and it will increase to 42 people over 65 years old for every 100 people between 0 and 14 years old by 2050. (Ministry of Health of Colombia, 2018, pp. 3-4)

Therefore, it is important for the Colombian legislation covering this population to be effective. In addition, the increase in the population index of this group becomes a challenge for the nation from the economic, political and health fields, because the majority of older adults suffer from some pathology, which makes their situation and independence more serious.

From a social point of view, it can be indicated that elderly population is socially active, in the sense that they maintain the expectation of developing their capacities (Sen, 2010). Therefore, the action of the State must be focused on guaranteeing a family environment that would allow them to strengthen and unfold their individual and collective aspirations and goals. This is why, and as an effect of changes at the global and local level, politically and socially, that in Colombia there is a broad legal framework that indicates the regulation and forms of protection for this population.

However, the constant discrimination against this population by various sectors or social spheres is evident, starting with the omission of responsibilities by the State, up to the physical, nutritional and psychological abandonment within the family nucleus; this situation becomes one of the most frequent social phenomena or behaviors. This is the most serious problem in terms of violation of the rights of said population, the evidence lies in the obligation to update the norm and the penalty for those who violate it. Figure 1 illustrates the regulatory outlook since the Constitution of 1991.

Figure 1. Regulatory Outlook since the Constitution of 1991



Likewise, the Colombian legislation determines a series of principles, rights and duties that lead to the protection of the elderly as subjects of rights, and population in condition of vulnerability. Law 1251 of 2008, for instance, establishes the following in its first article:

The purpose of the law is to protect, promote, restore and defend the rights of the elderly, guide policies that take into account the aging process, plans and programs by the State, civil society and the family, and regulate the functioning of institutions that provide comprehensive care and development services for people in their old age, in accordance with Article 46 of the National Constitution, the Declaration of the Human Rights Act of 1948, Plan of Vienna of 1982, Duties of Man of 1948, the World Assembly of Madrid and the various International Treaties and Agreements signed by Colombian Law 1251 of 2008.

When the approach concerning rights or a differential approach is mentioned, as reiteration, it is directed to those population groups that, due to different conditions of ethnicity, race, age, ideologies, or ways of life, should be recognized by the egalitarian policies ensuring they enjoy a more humane society.

The previous protection directive, Law 1850 of 2017 determines protection measures that penalize actions against the abuse of the elderly, especially, due to

intra-family and abandonment issues. Similarly, this aspect caused some articles of the Colombian Penal Code (Law 599, 2000) to be modified, such as article 229 as follows:

Article 3: Modify article 229 of Law 599 of 2000, which will read as follows:
Article 229. Domestic violence. Anyone who physically or psychologically abuses any member of their family nucleus, will incur, provided that the conduct does not constitute a crime punishable by a greater penalty, imprisonment for four (4) to eight (8) years. The penalty will be increased by half to three-quarters when the conduct falls on a minor, a woman, a person over sixty (60) years of age or someone who is physically, sensory and psychological disabled or impaired or in defenseless state. Paragraph. Whoever, not being a member of the family nucleus, is in charge of the care of one or more members of a family and performs any of the behaviors described in this article, shall be subject to the same penalty. (Law 599 of 2000)

Similarly, article 230 of the Penal Code on abuse by restricting physical freedom is modified, and article 229 A on abuse due to carelessness, negligence, or abandonment of a person over 60 years of age is added. Based on this, the development that the regulation has been having according to the well-being of the elderly as subjects of rights can be evidenced. The truth is that it is not about victimizing the population, but rather simply trying to provide preferential treatment due to their serious state of health and their condition of vulnerability. In this context, it should be noted that the Colombian policy on Human Aging and Old Age 2015-2024 is aimed at recognizing rights and guaranteeing the conditions of comprehensive protection with a differential approach to the elderly population based on social inclusion. Some of the challenges of this policy are presented in Figure 2.

Figure 2. Challenges of the Colombian policy on human aging and old age 2015-2024



The National Public Policy for Human Aging and Old Age from 2015 to 2024 (Department of Health, 2015) requires strategic guidelines to promote the protection of the elderly, by also identifying the family as a basic unit for the development of a society and the importance of caring for people who are in adulthood, a requirement that constitutes a relevant update to related policies. The challenges of this policy consist of improving the quality of old age, and eradicating hunger and poverty, factors that directly affect the legal minimum subsistence.

The department of Risaralda is implementing a Departmental Public Policy that establishes the guidelines for aging and the elderly, and proposes a goal similar to the national policy: ensuring the protection of old age and the people who are in that stage of their lives as special subjects of protection. This policy led the current departmental administration to promote a Development Plan for the years 2016-2019 (Government of Risaralda, 2016), which allows compliance with the program Risaralda: Educated, Innovative, Productive, and Inclusive (Government of Risaralda, 2016), that generates development and inclusion for the entire Risaralda community, including the elderly. To eradicate any type of discrimination and advance in inclusion processes in the country and in the department, an investigation in the specific case of the population of the elderly in Risaralda is intended to be performed. The elderly is a population group that because of ignorance and loss of physical and/or mental capacity has been the victim of constant rights violations.

The initial research question of this analysis was: what is the level of protection for the minimum legal subsistence of older adults as subjects of special constitutional protection against public policy for aging and older people assigned to public institutional care centers in the department of Risaralda? As specific objectives, legally establishing the rights that make up the minimum legal subsistence for the elderly in Colombia was proposed. Additionally intended was to quantitatively identify the number of inhabitants of the department of Risaralda by municipalities according to the official census, in order to identify the centers of public institutional care in charge of the protection of the legal minimum subsistence of the elderly in the municipalities with the largest number of inhabitants in Risaralda. This allowed for determining the possible activities available to the elderly in public institutional care centers charged with their protection.

Methodology

The article is centered in the socio-legal field from a type of exploratory-descriptive research with a qualitative approach. It is developed with a population of elderly population, from a study and analysis of the information about that topic and the review documentary on the entities and care centers that intervene in the Elderly Protection System. A theoretical framework was used that allows identifying the constitutional guarantees reflected in a concept of justice that conforms to principles of the social rule of law, such as those of John Rawls (1971).

The research that gave rise to this article responds to a type of socio-legal inquiry, because it is formulated with the aim of studying the social conditionality of the right related to the minimum legal subsistence of the elderly treated in public care centers in the department of Risaralda as subjects of special constitutional protection. It was decided to carry out a descriptive-explanatory research project, as it seeks to evaluate various components that are presented in the guarantee of the minimum legal subsistence as a fundamental factor in the human dignity of each person, particularly in older adults as citizens frequently in a defenseless state and/or abandonment, in addition to social and political strategies. From a documentary research perspective, a normative, jurisprudential, doctrinal analysis and the development of the guidelines established in the National and Departmental Public Policy on aging and old age was conducted. Finally, the dynamics and procedures carried out in public centers for the elderly

were observed. The population and sample for the normative analysis were older adults assigned to public institutional care centers.

Research Results

Rawls (1971) in the Theory of Justice chapter, dedicated to the "original position," states the following:

Obviously, no one can get everything they want: the pure existence of other people prevents it. The absolutely best thing for anyone is for everyone else to join him in promoting their own conception of the good, whatever it may be; and if not, that everyone else be required to act fairly. (p.135-136)

According to Rawls the specifically rational way of self-realization of the conceptions of the individual good refers to an institutional framework that guarantees the possibility of regulating the distribution of minimums according to principles of freedom and equality. In that respect, the "best for anyone" is to rationally adhere to a society founded on cooperation, individual good and assistance toward those who find themselves in less advantageous conditions vis-a-vis those who can enjoy conditions of equity.

The way in which Rawls thinks that the existence of such a society, that is, a "well-ordered society," can be ensured is through a conception of redistributive justice. If it is assumed that meritocracy is not natural, but each individual life is determined by a "chance of life," for the American philosopher it is imperative to reconfigure the inequalities that are the effect of this chance in the midst of a market economy, and, in this way, propose the need to rebuild the tradition of the social contract from its own foundations. Rawls starts from the classical conception, which conceives of the human being as a rational being who inquires about the best means to achieve his ends, and proposes the hypothesis of a veil of ignorance in which no one knows what his empirical interests may be. In this way he specifies his proposal by affirming the existence of the plurality of properties and goals. In addition, the author submits that the pillars of a society should be the principles of justice:

1. A principle that guarantees freedom for all.
2. A principle that favors the assistance to the least favored. For the purposes of this article, it is not necessary to enter into the debate around the priority of the principles, or in that of their possible internal contradictions (Gargarella, 1999). The truth is that Rawls (1971) argues that the way to distribute these principles is through primary goods, which he defines in this way:

These are things that a rational man is supposed to want regardless of whether he wants something else. It is assumed that, regardless of what an individual's rational plans are in detail, that there are certain things which he would rather have more than less. With more of these goods, it can generally be guaranteed that, whatever the end, it can be fruitfully achieved and its intentions carried out. The primary social good, expressed in general categories are: rights, freedoms, opportunities, powers, income and wealth. A primary good of great importance is the sense of self-worth. (p. 92)

It is these goods — which involve spheres of political, moral, economic, and legal practices — that end up being the object of distribution, that is, it is considered that the guarantee of these goods in a society will allow the possibility of a deployment of each conception of good and of achieving a good life.

For our object of study, this theorization of Rawls is of great relevance, as the empirical evidence and the revised background reports a permanent impossibility to guarantee this type of primary goods in elderly within the context of societies that aspire to realize the idea of a social State of Law (Landinez-Guio, 2020). These goods are also, at the end, the affirmation that dignity is the moral value that ends up as the base of democratic and inclusive societies.

Alternatively, Rawls' analyses allow us to understand the regulative bases of a social state based on the rule of law, and consequently, to analyze policies and institutional designs that tend to respect the ideals that devote its history and structure. Thus, freedom, equality and dignity constitute the fundamentals on which the institutional arrangements that act as means to allow the ends of citizens are sustained. Thus, primary goods and principles of justice are an important analytical tool to determine the degree of concreteness, effectiveness and guarantee that the State's actions represent in the concrete life of subjects of special protection as elderly people.

It is then intended to emphasize that this manuscript wants to make precise the national and international regulations on the subject, to establish to what

extent there is a guarantee of the minimum subsistence in the elderly within the space-time context chosen for the analysis.

Judgment T-581 A of 2011 established that the concept of the minimum subsistence must be evaluated from the satisfaction of the minimum needs of the individual, so it is necessary to carry out an evaluation of the situations of each specific case. However, a more qualitative than quantitative assessment enables perceiving levels of satisfaction of needs such as food, clothing, health, education, housing and recreation. Mechanisms of realization of the right to human dignity. A concept has then been established also by jurisprudence that refers directly to the minimum subsistence of elderly as an identifying criterion of respect for human dignity.

Therefore, it is determined that the minimum subsistence of the elderly is composed of the rights to health, education, housing, social security (wage, allowance and pension) and recreation. This right is devoted as follows in the *Declaration of Human Rights*:

Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence-worthy human dignity and supplemented, if necessary, by any other means of social protection. (1948)

The Article 23 of the *Declaration of Human Rights* establishes how a dignified subsistence should be understood, it is established that:

Everyone has the right to a standard of living adequate ensuring for himself and his family, health, well-being, and mainly but not exclusively, food, clothing, housing and medical care and necessary social services. (1948)

Finally, Article 25 of the *Universal Declaration of Human Rights* states that everyone has the right to "dignified conditions of existence."

International Law, Articles 7 and 11 of the *Additional Protocol to the American Convention on Human Rights (1988) in the Field of Economic, Social, and Cultural Rights to the Protocol of San Salvador* state that: Everyone has the right to a remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families. (Art. 7). It is important to highlight that the minimum subsistence will also be different for each older adult according to their stratum, since the elderly who lives in strata 1, 2, or 3 will not require the same needs with respect to the one who lives in strata 4, 5, or 6 due to the socioeconomic status to which he is adapted to live.

During the research it was necessary to collect statistical information from this population group. Thus, the Statistical information of the National Administrative Department of Statistics (DANE, 2005a) for the years 2005-2020

was reviewed. From this information, projections of municipal population by area were made and the following data were found for the department of Risaralda. The population of Risaralda for the entire department is projected for 2018 at 967,780, and for 2019 at 972,999

Table 1. Projection of the DANE (2005) for the population of Risaralda by municipality for the years 2018 and 2019

Municipality	Population 2018	Population 2019
Pereira	476.660	478.931
Apia	19.424	19.570
Balboa	6.330	6.330
Belén de Umbría	27.723	27.723
Dosquebradas	204.737	206.693
Guática	15.176	15.119
La Celia	8.550	8.530
La Virginia	32.261	32.328
Marsella	23.914	24.135
Mistrató	16.595	16.747
Pueblo Rico	13.809	13.998
Quinchía	33.939	34.002
Santa Rosa de Cabal	72.838	73.031
Santuario	15.824	15.862

From the methodological development of the research based on data gathering and the information collected by the instrument for this specific case, the Secretary of Social and Political Development of the department of Risaralda, reported the following existing households in Risaralda for the benefit of elderly people:

Apia: Ancianato Santa Clara De Asís, **Balboa:** Centro Vida Para El Adulto Mayo, **Belen De Umbria:** Centro Vida Bello Amanecer, **Dosquebradas:** Centro Vida José Argemiro Cárdenas Agudelo, **Guatica:** Asociación Hogar Del Anciano, **La Virginia:** Does not have nursing homes, **La Celia:** Centro Vida Para El Adulto Mayor, **Marsella:** Centro De Bienestar Del Adulto Mayor José María Correa Estrada, **Mistrato:** Centro Día Del Adulto Mayor Es El Hogar, **Pereira:** Centro De Bienestar Ancianos San José and Centro Vida Para El Adulto Mayor,

Pueblo Rico: Hogar Del Adulto Mayor El Buen Samaritano, **Quinchia:** Centro Día, **Santa Rosa de Cabal:** Centro Vida Adulto Mayor, **Santuario:** Centro Vida¹.

In the regulation review on the protection of the elderly in the department of Risaralda, it was also found that the public policy of Risaralda for the protection of senior citizens establishes the following rights necessary to offer in care centers and protection homes: food, psychosocial guidance, health insurance as beneficiaries of the subsidized regime and training in talent activities, sport, culture and recreation, funeral aid, and a minimum monthly wage. Thus, it is necessary that the people in charge of the centers of assistance to the elderly carry out the appropriate procedures access these services and that the whole community benefit. Additionally, that many of these households, especially the ones that are not private, are vulnerable and depend on charity to survive cannot be forgotten. In private households, the situation is different since there are many elderly people who are retired or whose families support them economically.

In addition, since 2002, Ordinance 001 (Departmental Assembly of Risaralda, 2002) has been approved in the department of Risaralda. It establishes the creation or issuance of the Pro-Welfare stamp for the elderly, the proceeds are directed to the households or centers of public assistance of the Department.

The preliminary diagnosis on elderly people, dependency, and social services in Colombia reports that, according to the General Census of Population and Housing (DANE, 2005b), Risaralda is one of the departments that has more elderly people. Likewise, the same source states the tendency for this number to grow, since one of the factors is the lack of job opportunities.

The Secretary of Social and Political Development – in charge of all programs for public policy on aging – was also consulted about census information for elderly people. As a response, it was reported that there was no census for homeless elderly people. For this reason, there is no exact data. However, it is worth mentioning that Centros Vida² is in agreement with the granting of the subsidy for the elderly and allows collecting some approximate data. Specifically, the exact data in the demographic analysis and diagnosis study is 350 homeless elderly people, but it should be kept in mind that in places where Centros Vida does not operate, no information is provided. As such the probability of a lack of knowledge of real data is high (Alcaldía de Pereira, 2016, p.139).

1. After verifying these data, it was determined that from 14 municipalities of Risaralda, and of the aforementioned centers, only La Virginia does not have in operation a center of assistance for the elderly.

2. These are places where protection is provided to elderly people belonging to the lowest socioeconomic strata. After a diagnosis of the degree of vulnerability, in these places it is intended to guarantee fundamental rights: health, education, recreation, etc.

Most of the data used for this analysis were collected from the implementation of a focus group with the directors of the centers, some caregivers and government officials. The different visits evidenced the current conditions of the elderly, and according to Risaralda's public policy for the elderly protection, food, psychosocial orientation, health insurance, insurance to the subsidized system, training in talent, sports, culture and recreational activities, and funeral assistance of a minimum monthly salary in force are guaranteed in the care centers and protection homes.

However, public center representatives always complain about the difficult procedures for applying resources. As a conclusion to the visits, there is always a political interest involved in order to be a beneficiary. The directors constantly struggle to guarantee senior citizens' survival in the care centers, and this struggle represents obstacles due to favoring and corruption of the State's great task of ensuring the rights of the most vulnerable.

When compared to the private care centers in the city of Pereira the elderly who live there are in a much better situation; their living conditions are quite dignified. In some cases, the supporting resources come from family contributions, and in most cases the beneficiaries are pension recipients, therefore, guarantying their rights' does not depend on any state procedure.

Conclusion

The social rule of law, based on its philosophical foundation as a welfare state, has a fundamental role in making the postulates of law – such as, in principle, human dignity – a reality. The elderly are defenseless, not only because of their diminished physical or cognitive state, but also because of stigmatization, abandonment, mistreatment and dependence in the world of work and family. Human dignity as a principle or postulate implies that the person has the capacity for choice and autonomy, in order to be free to choose without intruding on the freedom of others. The State, therefore, plays a role of support and guarantor of these freedoms.

This key issue of peripheral societies such as ours of great importance is to place ourselves in John Rawls' perspective in order to study and criticize the existing normative frameworks concerning the guarantee of dignity in vulnerable groups. According to his conception of justice (there are multiple concepts, but only one conception), primary goods are those on which the initiatives of an egalitarian society should focus when seeking alternatives to protect

the dignity of the most vulnerable population groups. In Colombia, and in particular Risaralda, this liberal initiative seems to be behind the regulatory and constitutional attempts to establish solid basis for guaranteeing the minimum living standard for the elderly.

On the other hand, there is recognition of this population's vulnerability which is reflected when monitoring the general guidelines proposed by the United Nations to guarantee a minimum subsistence right for the elderly.

However, the lack of a structured census in the municipality of Risaralda exhibits an institutional inability for serving the elderly in the best way. "The best way" implies what Rawls stated about primary goods: these are the basic conditions for a life to be fulfilled. However, when each individual's needs, specific problems and limitations are not identified, it is difficult to guarantee a minimum subsistence right.

This research revealed the existence of a regulatory framework structured to guarantee the rights of the elderly, and the problem of a lack of institutionalization of the demands of this population group. It was also identified that favoring dynamics are the ones that end up providing resources and, ultimately, become the exclusive way to guarantee the right to the minimum subsistence level.

Here it may be useful to cite, Amartya Sen (2010) who has stated that it is not just a matter of offering abstract rights, but knowing what people really want to do with their lives. The regulations to guarantee the minimum living standard for the elderly may have the problem of extrapolating a legal framework designed in a global manner to a specific context with its own precariousness and possibilities, without a prior political-social and economic analysis. The primary goods expected to be guaranteed, according to Rawls' theory must have a differentiated approach according to specific demands and needs.

In view of the above, it is established that the Colombian society is made up of different population groups that have rights as defined in the 1991 Constitution. The Constitutional Court has been establishing in its various rulings the need to protect rights driven by diversity and recognition, the importance of all Colombian citizens being recognized as active and political subjects of law. In this particular case, and despite the elderly conditions, there is a latent need to guarantee their minimum level of subsistence right, which will allow, in addition to the legislative evolution, rewarding them for their experience and the transcendence of their actions in history.

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