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Legal Capacity of Children and Adolescents: The Realization of Rights

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Abstract

The recognition of children and adolescents (hereinafter NNA, by its Spanish acronym) as full rights-holders under the Convention on the Rights of the Child (CRC) marked a turning point in the history of childhood and adolescence regarding the protection of their rights. Even so, this declaration did not give rise to legal mechanisms allowing this population group to assert these rights on their own, creating a normative contradiction. The CRC itself provided State Parties with a principle that can help overcome this obstacle: progressive autonomy, which aims to counteract institutions rooted in classical Roman law—still unfortunately in force in most legal systems—such as the legal incapacity to act.Through legal hermeneutics, applying the methodology derived from legality analysis and coherence analysis, this study demonstrates how to transcend the limitations on NNA's legal capacity imposed by the Civil Code, and how to incorporate progressive autonomy while correcting oversights observed in countries that have implemented it for several years. It also rethinks the material criterion for standing (legitimacy in the cause) to include minors, and proposes ways to engage the educational system in shaping legally aware individuals who understand not only their rights and duties but also their active role in defending and protecting those rights.

Keywords: *Progressive Autonomy, Legal Incapacity, Minors, Standing in the Cause, Normative Reform.*

Introduction

This article responds to the initial question of whether there is a legal institution that allows overcoming the limits set by the figure of the capacity to exercise that historically sheltered population groups placed in situations considered disadvantageous for business law, so that it had, from its beginnings, a clear patrimonial purpose, leading to the consideration of women as incapable, deaf people who could not make themselves understood in writing, native communities, the Afro-descendant population, people with intellectual disabilities and minors.

Although at the time, society shared that each of these population groups was immersed to the extent that it ended up not only limiting the exercise of their patrimonial rights but also of the very capacity to make decisions about themselves and their bodies, each group has gone beyond the normative limit at certain historical moments in which the view of the subjects has changed. allowing us to understand that what was previously seen as a protection measure, began to become an unjustified limit to their dignified life.

Thus, everyone, except children and adolescents, is today fully capable in the Colombian legal system, demonstrating that the limitation is cultural and that the Law, as a social tool, has obeyed it and has been transformed with societies. The question then is: Why are children and adolescents still legally bound to this measure? Or are there legal measures that allow the dual purpose of protecting children and adolescents and at the same time seeking the direct protection of their rights? The answer to the first is usually linked to sociocultural factors that continue to identify legal incapacity as a protective element of childhood and adolescence; the second could be answered through the principle of progressive autonomy.

In this context, the interviews held with legal operators – judges and magistrates, family defenders, judicial prosecutors and litigants – make it clear that today the gaze aims to overcome the vision of childhood and adolescence from lack and instead vindicate the paths that as subjects they have traveled, allowing them to participate as an increasingly strong force in decision-making that affects them and in increasingly broad legal issues. going beyond the initial sphere of the claim of their fundamental rights and allowing themselves

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to speak of legitimacy in the active case for civil, criminal, administrative and labor matters, even reaching mechanisms such as conciliation, of which they are not part today either.

These reflections seek to present ideas for a possible regulatory reform that allows us to talk about the presumption of capacity also for children, this time tied to the principle of progressive autonomy, involving the educational system with greater force in the process.

Method

This research, carried out under the interpretative paradigm and with a qualitative approach, responds to the logics of pure legal research (Sánchez, 2017), particularly that inscribed within the epistemological approach of legal dogmatics, very close to legal systems that, such as the Colombian one, privilege legislated law, separating the norms from the facts, the *should be* of the *be* (Duque et al., 2018).

Legal dogmatic research focuses its attention on the legal norm and its validity, so its essential sources are positivized law (Duque et al., 2018), the debates for its creation, the judgments through which it is applied and the jurisprudence of the high courts that allows us to know its interpretation. To do this, it begins by mapping the rules in force in the legal system (Sánchez, 2011), continuing to classify the statements that derive from them, resulting in an assignment of categories, generally through their deontic contents (Courtis, 2006).

Seen in this way, this research is characterized by a central interest in legal language, its interpretation and approaches the understanding of the phenomenon studied through the norm and also of the subjects who experience it, in this case, the legal operators, thus giving an internal perspective of the problem (Daniels et al., 2011), then, in the words of Zaffaroni, "The legal method is fundamentally the interpretation of the law and this is expressed in words (written language)" (Zaffaroni, 1998).

Today, the development of this type of research usually requires the use of several methods (Riofrío, 2015), which is why we resort, firstly, to the method of comparative law and, secondly, to the thematic analysis of the interviews through which the approach to the perceptions of the legal operators was obtained.

Comparison, as a method of research into law, makes it possible to compare concepts, principles, procedures, institutions, etc., always with a view to understanding and improving the legal system itself (Sirvent, 2014). This method also allows you to identify ruptures or changes in trend in the way of interpreting and applying the rules and which is very useful for carrying out critical dogmatic-legal research (Barrios et al., 2021).

The thematic analysis carried out on the in-depth interviews applied to 18 legal operators, including magistrates and judges, family defenders, court attorneys and litigants, made it possible to identify, analyze and interpret patterns or themes within the interviews, seen as a set of data, allowing the identification of recurring ideas about a topic or problem (Escudero, 2020).

This type of analysis involves, first, a familiarization with the data derived from the interviews (Braun & Clarke, 2021), which required several times to read the more than 330 pages of transcripts, derived from a little more than 20 total hours of recording. This exploration sought to identify overarching themes and the decision on what to code. Following this, a color coding was carried out that operated as codes, from which subtopics could be identified that allowed the deep understanding of the data. Then, the topics were evaluated to verify that they reflected the data and categorized (Álvarez-Gayou, 2003), prioritizing the initial categories of the research: capacity/inability to exercise of children, progressive autonomy and regulatory reform; at the same time, emerging categories such as education and legitimacy in the cause of children and adolescents were identified, verifying that they coincided with the questions derived from the interview.

For the final construction of the proposal, the legality analysis and the coherence analysis were used, which seek to identify the necessary forms of normative validity, that is, norms that, although they may be in accordance with the Constitution, do not have formal validity because they have not been elaborated by

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the legislative body; or norms that, although elaborated in accordance with the legislative procedure created for them, contradict the constitutional order (Agudelo-Giraldo, 2018), or even with the international one, giving rise to a new level of validity called supranational (Ferrajoli, 2002).

The general method was legal hermeneutics, a discipline responsible for the interpretation of normative texts (Sánchez, 2011), since it was possible to attribute meanings to the legal norms studied, jurisprudence and doctrine (Agudelo-Giraldo, 2018).

Results

Capacity/Inability of Children and Adolescents to Exercise

Bonilla (2020) points out that examining law as part of culture means, in a sense, entering into a reflection on ourselves, since understanding law is equivalent to understanding identity, both individual and collective. Thus, modern law, for example, is based on concepts such as individual rights, the supremacy of the law, the agency of the subject (Sen, 2000) or popular sovereignty, criteria that act as an axis, trying to give cohesion to all branches of law.

For the Colombian Constitutional Court, normative statements, as expressions of legal language, do not exhaust their meaning in the literal way in which they are written, but there is an additional normative content that refers to what the provision prescribes beyond the way in which it is drafted (Judgment C-534 of 2005), which allows us to understand why, A concept such as the ability to exercise, typical of civil law, crosses across areas as dissimilar as criminal or labor law, but also why there are contradictions between them when an in-depth approach to the figure is made.

Thus, for example, for the Court, in the face of the legal capacity of minors, it is essential to distinguish two dimensions: the first is based on the ability to be the holder of rights without any requirement that limits it; and the second view is the capacity to exercise, which translates as the ability to dispose of all those rights of which one is entitled (Judgment C-534 of 2005).

Thus, and given that minors enjoy legal capacity, also known as the capacity to enjoy, which in turn prescribes the enhanced protection of the rights they hold, the Court finds that the restriction of their capacity to exercise their capacity is in accordance with the law, with the justification that this limitation operates to safeguard their interests in an accentuated manner. therefore, in the opinion of the Court, incapacity, still in force today in the Civil Code, must be understood as an instrument of protection (Civil Code of the Republic of Colombia, 1887; *Judgment C-534 of 2005*, 2005).

Thus, this declaration of legal incapacity is conceived by the legal system as a necessary signal to warn that minors are in conditions of inequality, establishing for them the figure of legal representation, aimed at safeguarding the interests of minors, seeking, initially, the protection of their assets by participating in legal transactions for which they are considered not to be on equal terms. For the same purpose — the protection of the property of minors — civil legislation also recognizes their legal capacity to exercise in certain cases, specifically when their property is not seriously compromised.

Thus, the legislation in force in Colombia provides for the possibility of annulling legal acts entered into by minors, which for the Civil Code and the Constitutional Court (Judgment C-534 of 2005) is a protective mechanism that responds, as indicated, to the logic of safeguarding and patrimonial benefit of those who have not reached the age of majority. by balancing situations that could generate conditions of evident inequality.

Despite the apparent legal clarity on the subject, interviews with legal operators revealed a different position. This is the case of OJL02, who, when asked his opinion on the inability of children and adolescents to act, replied that the mere expression of incapacity generates an idea of non-existence or protection of an object, says that "it is like nullifying, leaving existence without effect and like passing into a passive existence".

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For several of the legal operators consulted, the capacity of children and adolescents to exercise is an ambiguous concept because it allows them to perform some acts such as marriage or the administration of the extraordinary adventitious peculio, but it prevents them from participating in the purchase and sale of a property, a vehicle or work, making several of them inclined to think that this institution "does not seem to want to protect the rights of children, but to satisfy some social aspects that were still anchored to what has been the Civil Code, which is so old for modern legislation" (OJL03).

Others, such as OJL05, question whether the incorporation of a norm such as the one derived from Article 26 of the CIyA on due process and the right to be heard of children and adolescents and the continuity of the denomination as incapable in the Civil Code, because "Why then did they say let's take the opinion of someone who does not have the capacity to exercise?"

OJJZ01, from the judiciary, considers that talking about incapable subjects today should be unconstitutional, since "The very concept of incapable entails a figure of superimposing oneself over that person". In a similar sense, OJJZ03 from the magistracy considers that the capacity today is "totally nostalgic for people who have not yet been able to overcome the project of a Civil Code that no longer responds to the need of a modern society". In turn, for one of the judicial prosecutors consulted, OJPJ01, "there are no arguments for the continued existence of limitations, on the contrary, what the arguments lead us to is to say that these limitations at least in adolescents should disappear."

Progressive Autonomy

Although the principle of progressive autonomy has been a mandate for the States Parties since the ratification of the 1989 Convention on the Rights of the Child, which in the case of Colombia was given through Law 12 of 1991, even today it is not directly mentioned in the legal system, since it has not been incorporated into the Civil Code as has happened in some neighboring legal systems such as the Argentine (Radcliffe, 2024), nor the Code of Childhood and Adolescence, which only goes so far as to listen to children and adolescents in cases in which decisions are made that may affect them, as indicated in article 26, without setting age conditions (Code of Childhood and Adolescence, 2006).

Authors like Castillo (2021) point out that in Colombia this principle operates when the Supreme Court of Justice and the Constitutional Court establish that joint custody should be the rule and that children and adolescents should be heard and their opinion taken into account, but it does so by linking this interpretation to Article 5 of the CRC which expressly refers to the fact that States parties must respect the duties of the States Parties. rights and responsibilities of the legal representatives of minors, to provide them, according to their development, with the necessary guidelines so that they can exercise the rights enshrined in the Convention, an article that, although it refers to the need to do so while respecting the evolution of the capacities of children and adolescents, does not mention the obligation to be heard in the proceedings, as does Article 12. It is important to point out at this point that they are only heard when it comes to contentious custody proceedings, because if in the process of divorce or dissolution of the civil effects of the religious marriage the parties express an agreement on custody, this right to listen to the children and adolescents is dispensed with.

In the region, there are countries that have incorporated this principle through express legal statements, allowing us to observe progress but also the challenges that arise from this figure. An example of this can be Mexico, where there is a General Law on the Rights of Children and Adolescents that promotes progressive autonomy by establishing mechanisms to ensure that the opinions of minors are considered in matters that affect them, emphasizing the right to be heard and to actively participate in relevant decisions (Castillo, 2021); or Argentina, where progressive autonomy is contained in the National Law for the Comprehensive Protection of the Rights of Children and Adolescents, Law No. 26,061, and the Civil and Commercial Code of the Nation of 2014 where adolescents are recognized as full subjects of rights, even though some authors point out that there is still a significant gap between the regulations and their effective implementation (Ochoa, 2019). In fact, Article 26 of the Argentine Civil and Commercial Code establishes that minors have the right to exercise certain faculties of self-determination, provided that they understand

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the situations that affect them, based on the premise that children, as they develop their cognitive and emotional capacity, are in a position to actively participate in decisions about their lives (Radcliffe, 2024).

Going a little further geographically, Spain, through the Organic Law on the Legal Protection of Minors issued before the CRC in 1996, establishes similar principles by recognising the right of minors to be heard in matters that affect them, thereby promoting a framework where youth participation in various social areas is encouraged and showing a more consistent effort to integrate young people in decision-making. which has allowed a more notable advance towards a participatory culture (Castillo, 2021; Radcliffe, 2024)

Thus, the principle of progressive autonomy has gradually become a large number of States parties, in a paradigmatic change mainly in family law, by allowing them to be involved, as they acquire greater development, maturity and competences, in decisions that may affect them (Radcliffe, 2024), but it is not reflected with the same force in other areas of law, including constitutional law.

What is clear is that the right to be heard, the fundamental basis for the operation of the principle of progressive autonomy, is a mandate that the States parties cannot ignore today. UNICEF (2020) points out that this right not only represents a prerogative for each child or adolescent, but also becomes an essential mechanism for the protection of their rights, since Article 12 of the CRC establishes that it must be guaranteed that children and adolescents can form their own opinion to freely express their opinions in any matter that may affect them, so their opinions must be taken into account according to their maturity and age. Despite this, in its Working Paper No. 2, it recognizes that often existing structures do not allow for real and meaningful participation of children and adolescents, which limits their ability to influence crucial decisions for their lives.

In the inquiry made to legal operators about this principle, it is important to point out that several of them indicated that they were unaware of it and another group indicated that, despite knowing it, they had never applied it. The main reason outlined is that it does not appear expressly in the Colombian legal system, as indicated by OJL04, for whom this absence represents an incoherence since the CRC requires the States Parties to incorporate this principle, even so in Colombia the denomination of incapacitated persists which, in the case of those under 12 years of age, is absolute "then their voice does not exist, their will is completely annulled and replaced by their parents in the exercise of parental authority or their guardians in their absence."

OJJZ02, from the magistracy, states that since its tenure "there has never been a scenario of discussion where in a process any of the parties raises it and not even that I feel the need for the purposes of administering justice, to address it."

Regulatory Reform

Without exception, the legal operators interviewed considered that a regulatory reform on the capacity of children and adolescents to exercise their rights is pertinent, although they express different arguments for this, some even going so far as to analyze the most effective mechanism to introduce reforms on children's rights to the Colombian legal system.

OJL01 considers that a modification of the legal system is required in order to grant greater opportunities to act to minors, bringing as an example Law 1996 of 2019 on the rights of persons with disabilities and where capacity is presumed, considering that the same argument would be valid for children.

For its part, OJPJ02 points out as the main reason for this reform the need for the right of childhood and adolescence to be completely detached from civil law and be autonomous, since it considers that the legislation, as it stands today, has serious gaps, possibly linked to adult-centrism, pointing out that "we adults believe that we are making the best decisions for minors without listening to them and without valuing the will of that minor." And it is that for this legal operator "today in Colombia a minor up to 18 years of age, we almost compare him to a person who was declared in interdiction, that is, he has no

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possibility of decision", so he also shares the argument that Law 1996 of 2019 is of transcendental importance for children, since they are the only population group that remains tied to the figure of disability.

In a similar sense, OJL01 considers that "with minors, it could be based on that same legal presumption and it is presumed that they all have the capacity to act, unless it is demonstrated that they have some psychological affectation that prevents them from understanding the act they performed."

OJPJ02, for its part, proposes three steps to overcome this obstacle while the effective reform of the legal system takes place: the first, always starting from the CRC; the second, the independence and autonomy of children's rights as a governing norm of the best interests of children and adolescents; and, thirdly, to guarantee the effective listening of minors in all processes that may affect them, using the figure of support if deemed necessary.

Faced with the strategy to obtain this pertinent reform, there are different positions, since OJJZ01 leans towards a claim of unconstitutionality on the figure of incapacity, a path shared by OJL04, for whom it should be carried out either through a Type C constitutionality ruling with *erga omnes* effects, or of a SU Type judgment through which the Court unifies its interpretative criterion and application of this principle. It rules out the T-type judgment, because despite its *inter communis effect*, each case would have to be protected under similar conditions.

They also open the possibility of legislative reform, but several of them, such as JL04 and OJPJ02, are reluctant for two main reasons: the first, of an ideological nature, as they question the political interest of the legislative body to promote a norm that regulates the principle of progressive autonomy in the national territory, in addition to the possible interference of pressure groups such as religious or extreme right-wing groups that are not close to the consequences derived from the implementation of this principle; and, the second, that it would have to be done through a statutory law that guarantees hierarchical superiority, which requires a greater effort of political unity and that it be done in a single legislature, requiring a strong political and social mobilization.

OJPJ01 is closer to this last proposal, as he calmly observes the legalism of legal operators, "So it would be, for example, to rethink article xyz that brings the prohibition that they can only go to the authority through their representative to allow them to do it themselves."

Legitimacy in the Cause of Children and Adolescents

Childhood is not only a biological stage, it is mainly a social phenomenon that reflects the expectations, values and norms of society in different times (Chica & Rosero, 2012), so that adapting normative systems to social changes is essential, since law, like any other creation of human culture, is dynamic and changing.

Three situations account for the need for recognition of the legitimacy of the cause of children and adolescents in Colombia: (i) the current legal possibility of filing actions for protection and petition rights; (ii) article 26 of the Code of Children and Adolescents and its recognition of due process for children and adolescents; and, iii) the perceptions of the interviewed legal operators.

Thus, to account for the first of these situations, it is worth noting that the constitutional expression derived from Articles 23 and 86 that regulate the right to petition and the action for protection, respectively, and which begin by stating that *every person* has the right to establish them, understanding that in Colombia one is a person, as stated in Article 90 of the Civil Code, at birth, that is, when they are completely separated from the mother, implies that children and adolescents in Colombia have legitimacy in the cause to file these constitutional actions. Added to this is the informal nature of the same, which allows them to be filed, even verbally, before the competent authority. Another problem, which will not be addressed in this article, is that derived from effective access to these authorities.

To account for the second of the situations indicated, it is necessary that Article 26 of the Code of Childhood and Adolescence regulates in Colombia the right of children and adolescents to be heard and to

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have their opinions taken into account in all administrative, judicial or any other process in which they may be involved. at the same time, it decrees that the guarantees derived from due process must be applied to all actions in which children and adolescents are involved.

And, finally, the perceptions of the interviewed legal operators revealed the need to recognize the legitimacy of the cause of children and adolescents for matters that concern them and that go beyond the claim of their fundamental rights. Thus, according to OJL04 "a minor should not have to require his parents, both in exercise of parental authority, or have to go to a guardian or have to go to the family ombudsman to be able to exercise his fundamental rights. This is a barrier to access to the administration of justice."

OJL01 comments that preventing minors from going directly to the administration of justice and forcing them to do so through their parents or that a guardian is first appointed to act on their behalf, represents a procedure that ends up violating the rights of children and adolescents. Something with which OJL04 agrees, since he states, from experience, that he has felt real sadness when a sentence arrives that, when a judicial process fails, ends up exacerbating a family and therefore social problem by not taking into account the will of children and adolescents in issues such as custody and personal care that touches the bottom of their lives and development. Thus, that sentence does not resolve the conflict "but intensifies, then the parents return to the conflict and return to the same litigious scenario. And among the errors we see is either that the child was listened to but his will was misinterpreted or he was never listened to."

For this reason, OJL01 considers that the main weakness of the current legislation is "to classify them as incapable without first having taken the trouble to evaluate their psychological maturity to make decisions regarding certain acts", also pointing out how arbitrary it is to prevent minors from performing legal acts on their own, believing that parents or legal representatives will always act for the benefit of their children.

OJPJ02 states on this idea that today we must talk about the capacity of minors to "go to the authorities for themselves, to assert their rights, when even when the perpetrator may be the legal representative of the victim, of that minor", leaving in the hands of the judge the assessment of the credibility or not of their arguments and possible evidence, without discarding his version just because of age.

In a similar sense, OJJZ04 states that the norm today should allow minors to activate the system autonomously and "that they do not need a father, that they do not need a mother, that they do not need a guardian, guardian, it is not their decision, do it, we will listen to them directly." Something that is complemented by what OJJZ05 points out when he comments that "minors must also be legitimized to file criminal complaints. ... If they are the victims, I believe that they should be legitimized to file complaints as legitimate plaintiffs in civil, commercial, administrative matters, I am not sure."

And these reflections lead to what OJL05 called the sophism of procedural legitimacy, because following this line of thought, for many of the judicial operators interviewed, children and adolescents must begin to be considered part of the judicial processes that could affect them, allowing them to act in the process and not only to be heard. For this litigant, the problematic element in the question of granting them legitimacy to be a party could be in the body of evidence, but it is easily overcome through the power of the judge to decree evidence, since a system in which "the one who sues is the mother or the father for the child, then the one who acts with all his hatred or with all his love or with all his feeling of abandonment is the adult, not the child."

In the face of doubts about the capacity of children and adolescents to understand legal causes, OJDF02 maintains that the answer lies in the interdisciplinary teams that family police stations have today, for example, and that it would allow legal operators to have a specialized team to assess the maturity of the minor. the power of their arguments and whether they are theirs or implanted by third parties. Therefore, as stated by OJJZ01, what is sought with the legitimacy to be a party, is "To give full guarantee to fundamental rights, starting with human dignity, to achieve the human dignity of people, in that end of subjects entitled to rights."

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OJPJ02 proposes to introduce progressive capacity by law, clarifying that it begins from the moment of birth, which will allow more and more rights and actions to be exercised. To do this, it can be accompanied by reasonable accommodations or support, if applicable, similar to the way the 1996 law does with people with disabilities. OJJZ06 supports this position by considering that "it is not the age, it is not that incapacity, those other factors associated with the child's behavior, his medical, mental, emotional condition, which can determine to the judge that the child is not capable of exercising", an approach that is reinforced by the examples that OJDF02 and OJJZ02 bring from experience. the first by stating that children and adolescents should be able to sue for alimony from the father who fails to comply with this obligation, since often the father or mother who has custody does not do so for personal reasons that involve their sentimental relationship, leaving children and adolescents without this support and thereby reducing their quality of life; and, the second case comes from administrative law, from which the rights of children and adolescents are rarely directly touched, but the administration of the compensation sums of which they are often benefits is questioned, since the person claiming for them usually has the power of their administration and does not require the acquiescence of the minor, holder of that right, to decide its destination.

For OJL04 it is clear that the capacity of minors must also be brought to the exercise of the contract, since this is an element of the validity of the legal business, thus allowing them to intervene in patrimonial matters and that their voice is taken into account "and not annulled, made invisible or replaced as it is currently."

A final relevant aspect pointed out by several of the key informants, including OJL02, is related to the processes that admit conciliation, since in these it is not mandatory to listen to children and adolescents, since the law allows conciliation to be carried out in private centers that lack interdisciplinary teams trained for interaction with minors within the processes, this conventional and legal call is completely invisible, making concerted decisions between adults in their daily lives with absolute ignorance of the feelings, thoughts and desires of children and adolescents even when these decisions seriously affect their lives, as is the case with custody.

Education

The school, in its social and educational function, stands as a crucial space in the formation of subjectivities, particularly in the context of education for citizenship. This process is not merely academic; it implies an identity construction that is intertwined with the social, political and cultural dynamics of the environment. In this sense, the role of the school transcends the mere transmission of knowledge, becoming an agent for the formation of critical and participatory citizens. (Vallejos et al., 2022)

The first thing, according to the Committee on the Rights of the Child (2009), is to recognize and guarantee the right of children and adolescents to express their opinions within the educational environment and school, as this allows guaranteeing the full exercise of their rights. This advisory opinion stems precisely from the Committee's knowledge of the lack of regard for this right, as it observes authoritarian, discriminatory, disrespectful and even violent behaviour in many institutions and classrooms, which leads it to urge States parties to adopt measures that promote the effective exercise of the participation of children and young people and that their views be taken seriously. This begins with any training space, including early childhood, where the active participation of the child must be promoted and a collaborative learning environment must be fostered. From this perspective, education must consider the living conditions of children and their vision of the future, incorporating both their opinions and those of their families when designing curricula and school programs (Radcliffe, 2024)

In addition to the above, the Committee notes that, in order for rights instruction to have a real impact on the motivations and conduct of children, it is necessary that these rights be practiced within the educational community, an environment in which children can assess, first-hand, whether their right to be heard is truly respected. for this reason, it also recommends that all rights be embodied in institutional texts, and not depend on the mere goodwill of the educational authorities and teachers (Committee on the Rights of the Child, 2009). This translates into guaranteeing the right of children and adolescents to be heard in any institutional decision that has an impact on him or her, so they must also have both administrative and judicial challenge mechanisms, including matters related to school discipline. Achieving the purposes that

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both the CRC and the Committee on the Rights of the Child intend of the education system also implies the training of all the personnel involved in the process, including directors, teachers, and parents.

However, this same Committee, in General Comment No. 20 (2016), points out that in order to achieve this objective, an obligation of the education system is precisely to disseminate in accessible language all the necessary information not only on the rights of children and adolescents but also on the ways to exercise them, incorporating their teaching into the curricula as the main strategy (Committee on the Rights of the Child, 2016). For this reason, the Colombian constitutional order, in its article 41, mandates the teaching of the Constitution and civic education at all levels of basic and secondary education, this constitutional mandate being developed by Law 115 of 1994, General Law of Education, which states that this training must be gradual and form part of the curriculum of all educational institutions. public and private, of the country.

Thus, the Ministry of National Education defines as one of the objectives of the teaching of social sciences, the training of citizens who participate in society, who are aware of their rights and respectful of their duties (Ministry of National Education, 2002a), and when referring to specific training in Constitution and Democracy, it describes objectives that include training for the exercise of citizenship, in addition to knowledge of the different political institutions present in the national territory, bringing for this a course that passes through the teaching of the rule of law and the programmatic principles of the Constitution, continuing with the sovereignty and multi-ethnic nature of the Colombian nation, the purposes of the State, human rights, the structure of power and democracy, pointing out that all this knowledge must be put in context because the best strategy for learning it is, precisely, to make it experiential from school (Ministry of National Education, 2002b). These guidelines of the Ministry are developed through Regulatory Decree 501 of 2016 where the Basic Learning Rights (DBA) are created, which propose the knowledge that children and adolescents must achieve in each grade of basic and secondary training. So far, none of these laws, decrees or guidelines speak exhaustively in Colombia of the principle of progressive autonomy, even though several of them mention criteria such as development and maturity as auxiliary criteria of age.

Following these same mandates derived from the CRC, Argentina, which was one of the first in Latin America to incorporate the principle of progressive autonomy into its regulatory system, allows, after its years of experience, to observe how it has been incorporated into schools. Thus, a research carried out in three educational institutions shows how teachers perceive this principle as part of the development of children's capacities to make decisions according to their age, but they do not link it to the legal world or to an obligation derived from either the CRC or the law, thus demonstrating a lack of connection between the discourse of rights and educational practice (Etchebehere, 2011), which should serve as a significant experience for countries like Colombia that have not yet explicitly approached the beginning, even if it is done tacitly in the Code of Childhood and Adolescence and some sentences of the high courts, although still with a certain timidity.

Etchebehere (2011) also reveals in her research that teachers do not always see themselves as guarantors of children's rights, which results in an absence of institutionalized spaces to reflect on the application of this principle in daily educational practices and hinders the coherent and effective implementation of children's rights in the school environment.

And although traditionally, guardianship, education in rights and supervision have been entrusted mainly to parents, today this scheme is altered because it is developed by other agents of society (Velasco, 2024) such as civil organizations, sports clubs, youth groups, religious venues and, of course, the school.

For this reason, it is common to find that scholars recommend a stronger integration of the principle of progressive autonomy in educational institutions, proposing that adults assume a role of containment that does not imply restricting the development of the autonomy of children, making the laws on the matter include provisions that promote autonomy that respects the context and particularities of each child. ensuring an effective and contextualized application of the principle of progressive autonomy in school. (Salomone, 2013)

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This distance between the CRC and national norms for the implementation of the teaching of rights and actions in the education system is evident in the limited knowledge that adolescents usually have, for example, of their sexual and reproductive rights or in matters of gender identity (Galassi et al., 2024) and, mainly, in the legal mechanisms for their defense, which is why it is proposed that educational institutions assume a more active role in the formation of rights and in the effective inclusion of these issues in school curricula.

For the interviewed legal operators, education should be seen in a much broader way, since they consider that it should not only be part of the curricula in basic and secondary training, but also in universities, but also reach parents, teachers and legal operators.

This is expressed by OJL04 when it states that when minors are told that they are incapable, their dignity is being taken away, so this transformation must come hand in hand with the training of all those who are involved in the process of education and upbringing of children, starting with the parents. Thus, parents must be educated so that "they do not continue to raise incapable children"; also to legal operators and judicial officials, so that they overcome the protectionist view of children from which their voices are annulled. This view is shared by OJDFO1, who thinks that the legal operator requires permanent training "because the law evolves, because society evolves and because you need the two things to combine within what you need to define."

But of course it has to reach schools and children and adolescents, which requires training teachers, taking these premises to undergraduate careers and also to law because, as OJL04 expresses, it must radiate all areas, including procedural law, and not only family law. Also because they are arriving at universities at a younger and younger age, which requires that this field of training is also prepared for the training of autonomous citizens capable of mobilizing the system for the defense and protection of their rights.

And this is because, as OJJZ02 points out, the school must be a bridge between the knowledge of rights and the actions for their defense, and the effective implementation of them, because "if I am a child, I feel that my right is being violated, I know that there is a judge who can help me, but how to get there", so he thinks that a mechanism or tool should be generated that allows access to tutela actions and petition rights through the school.

Because the rules alone cannot make the change that the system needs, so, as stated by OJPJ02, it is necessary to work both on the legal incorporation of the principle of progressive autonomy and the recognition of the procedural legitimacy of children and adolescents, as well as on the training they receive at school to materialize these rights.

All this is reflected in the OJL05 demonstration: "for me, education is the way... I believe that education is fundamental, education in all instances and continuous education, not continuous, but continuous of phenomena."

Discussion

The analysis of how comparative law has influenced the formation of modern subjectivities, unfortunately, has remained on the margins, so that today there is no exhaustive exploration of the set of norms and practices that govern the production, exchange and use of legal knowledge (Bonilla, 2020) and this has implications not only in institutions, but also in the procedures, norms, etc., which are implemented taking as a model another normative system, but in the way society assimilates and appropriates them, thus constructing legal subjectivities that are extrapolated to the borders of a given territory.

This is so, in part, because, as Bonilla (2020) points out, modern law is an inseparable part of modern culture, as it is integrated into the horizon of perspectives in which the modern subject lives, configuring itself as one of the pillars of meaning through which identities, both individual and collective, are constructed, since these are to a certain extent shaped by the narrative that modern law has drawn around essential issues, For example: What is law? Who has the right? Or, approaching the object of this research,

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what is the inability to exercise? Or who is incapable of acting?, remembering that Law is aligned with the values accepted at the historical moment in which it is produced, becoming the ethical background of the rules and with great influence on the way in which subjects conceive themselves.

That is why rethinking legal figures such as the incapacity of children and adolescents is essential for contemporary law, since it is not only a figure that represents a past way of conceiving childhood and adolescence, but also clashes with many modern approaches such as the general presumption of capacity or the declaration of children and adolescents as full subjects of law.

Today, a large number of countries are inclined towards the incorporation of progressive autonomy which, although not perfect because it leaves a margin for the subjectivity of the legal operator and requires the intervention of a large and expert interdisciplinary team, is seen as the best legal strategy to guarantee the effectiveness of the principle of the best interests of minors. but, in addition, respect their autonomy in development. This requires, as Hernández points out, (2023), in addition to legal reforms, a cultural and institutional change that promotes the active participation of minors in decisions that affect them.

Progressive autonomy is also considered crucial in the formation of active and responsible citizenships, but this requires, as Radcliffe (2024) points out, that both educational and family institutions overcome paternalistic practices and foster an environment where minors can fully exercise their rights, which is expected to help build fairer and more inclusive societies where the voice and active participation of all its members is valued.

This approach, as UNICEF (2020) points out, recognizes that children and adolescents are actors with the capacity to influence their environment and therefore, by allowing them to participate in relevant decisions, their dignity is promoted and a sense of civic responsibility is fostered from an early age because expressing their opinions helps them acquire essential social and emotional skills.

And the fact is that the aforementioned approach, which has been consolidated within different areas, not only the legal one, joins what has been proposed from the field of development and public policies, called, as Nussbaum points out, (2012), *Capabilities Approach* or *Human Development*, from which they ask themselves what people are capable of doing, and what opportunities are available to them to materialize that potential. This paradigm shift implies that institutions, in order to be fair, require the support of the psychology of citizens; hence, the role of education is fundamental for the promotion of a society that attends to human equality with dignity.

In the Colombian case, the big question is not whether or not progressive autonomy should be explicitly incorporated into the legal system, but the mechanism through which it should be done to achieve greater effectiveness and scope, since, in addition to overcoming many of the obstacles drawn by legal incapacity as a figure that must fall into disuse, it is also a commitment derived from the ratification of the CRC.

Thus, although the legislative path is usually the obvious one, because it represents the appropriate constitutional path for this purpose, the phenomenon of the constitutionalization of law has partly transformed the positivist tradition, gradually making constitutional courts gain greater and greater importance in terms of the operability of legal systems, by allowing them to create strategies applicable to all people in a country through the so-called judicial activism. that was born, initially as a negative control to remove norms or parts of them from the legal system as a strategy of constitutional guarantee (Prieto, 2018), but which is beginning to become a real task of normative creation in countries that, like Colombia, anchor the criterion of normative validity in the principle of legality, very typical of systems with focused or mixed control of constitutionality.

While it is true that this path today is as valid as the legislative one, it implies that an action of unconstitutionality is filed that allows the Constitutional Court to open this debate, or that a tutela ruling on a related issue reaches the highest constitutional court for review, but it would also imply a paradigm shift in the body because, as is made clear in the section on results, for the Court today the disability of children and adolescents continues to be a protective figure.

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The legislative route, although it is more demanding and extensive, in addition to requiring the agreement of a greater number of wills, is the correct political and legal route for the establishment of regulations, as is the case of the incorporation of a new figure such as progressive autonomy. It could also, since it is the complete regulation of a right that touches on fundamental rights, it could be a statutory law that gives it greater hierarchy and, with it, repeals all previous and inferior norms that are contrary to it, which would include norms of the Civil Code and the Code of Childhood and Adolescence, thus also making it possible to overcome the regulatory ambiguities generated by the incorporation of an institution such as this. The incorporation of this figure also becomes the door to talk about the legitimacy of the cause of children and adolescents, since access to the administration of justice would no longer be conditioned by age, but by conditions linked to the development and maturity of each minor placed in precise conditions and that must be evaluated one by one. with the implementation of support measures, if deemed necessary by the legal operator responsible for making decisions on the case.

To achieve this purpose, the intervention of the school is transcendental, because although family and society also participate actively in this process, it is the protagonist in the formation of political subjectivities committed to the exercise of their rights and the fulfillment of their duties, for this reason it is essential that the curriculum includes training not only in rights and duties, but also in the but also in actions and mechanisms for its protection and defense, since this is still a political instrument that selects and legitimizes certain knowledge while excluding others, so that today the curriculum not only educates, but also configures identities by defining what should be learned and how it should be taught. (Pedranzani et al., 2013)

This is why the school plays a fundamental role in the formation of critical citizens for active participation in democratic life, so preventing classrooms from being the scenarios for the reproduction of inequalities must also be a central interest, responding with formal education to the ideal of citizens that are expected and avoiding reproducing models that invite the recreation of passive citizenships. thus contributing to the construction of fairer societies (Bolatti, 2022) and by participating, they participate in the construction of both individual and collective subjectivities, the former being linked to psychic and emotional development and the latter to social imaginaries and representations, concepts that feed each other (Pedranzani et al., 2013).

This view would make it possible to overcome the vision of the school as a place of mere discipline that seeks the production of subjectivities useful to the social order (Quiroga, 2017), which perhaps, so far, has not been interested in children and adolescents knowing that they are political subjects with autonomy and capacity to present actions for protection and rights of petition without the need for the intervention of third parties of legal age and that a childhood and adolescence begin to be formed prepared to take on the challenges of progressive autonomy, that allows them to claim their legitimacy to act in processes that escape constitutional actions but that affect them directly, whether or not these processes are against, or not, their legal representatives.

Thus, as Quiroga (2017) points out, the school continues to be a central space for the production of subjectivities and the formation of citizens, which implies recognizing this transformative potential and betting on educational practices that prioritize human development, critical thinking, and solidarity.

Once this research has been completed, if it is possible to overcome the legal obstacles derived from the classic figure of capacity/inability to exercise and grant capacity to minors, starting, as is done from Law 1996 of 2019 on the rights of people with disabilities, from the presumption of capacity, which may be accompanied by the allocation of support if deemed necessary.

In addition to this declaration, the strict implementation of the principle of progressive autonomy, which makes it possible to assess the psychological conditions, emotional development and maturity of each child or adolescent placed in a particular condition for the claim of their rights, is the second step to guarantee the effective defence of minors' rights.

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Given the two previous steps, it is possible to speak of the recognition of the legitimacy in the case of children and adolescents for procedural actions that exceed the scope of fundamental rights and extend to property, contract, labor and criminal law matters, thus materializing their place in the legal world as full subjects of law.

This research represents one of the first approaches in Colombia to the possibility of reconsidering the inability of minors to exercise, and the openness that their consideration as full subjects of law brings to procedural law: the recognition of legitimacy in the case, for which the principle of progressive autonomy will play a transcendental role by allowing the individual conditions of emotional development to be the same. cognitive, psychological and other aspects of each minor that determine whether or not they can access, through the assessment of an interdisciplinary team, and not the mere general exposition of an age that, seen in this way, is nothing more than a number and that today ends up violating the essential rights of minors, by leaving the materialization of their rights tied to the will of adults, so continuing to investigate the implications of this recognition will be transcendental to better understand the figure and to do so start from the mistakes and successes of countries that, such as Spain or Argentina, have been implementing it for nearly a decade, have begun this process, it will be a strategic starting point.

It would also be pertinent to carry out an investigation linked to the educational system and why the procedural tools for access to constitutional actions have been omitted from the curricula of Constitution and Democracy and the implications that this determination has had on the construction of political subjectivities.

Conclusions

A mandate derived from the ratification of the CRC is to reform the regulatory framework to guarantee the creation of mechanisms that guarantee children and adolescents' access to the necessary information and adequate support for the expression of their opinions and that these are taken into account in judicial or administrative processes in which cases that affect them are decided. therefore, reviewing and reforming the child's own legal system is essential in compliance with this international commitment, since, as the Committee on the Rights of the Child has pointed out, experience has shown that States parties do not always give due consideration to the right of the child to express himself.

The purpose of this right is to ensure that the principle of the best interests of children and adolescents, as a guiding principle of children's rights at the international level, is materialized, in coherence with the recognition of children and adolescents as full subjects of rights, thus allowing them to participate in relevant decisions about themselves and their lives. not only does it promote their dignity and empowerment, but it also encourages progressive autonomy as a necessary legal tool for the effective defense of their rights.

To continue to affirm that children and adolescents are full subjects of rights and not allowing them access to the administration of justice is openly contradictory, since in no way does this recognition mean that the judicial system becomes the machine of the wishes of children and adolescents, or that it succumbs to fulfilling their whims as if they were orders. because what is at stake is, precisely, to operate in coherence with what this declaration means, to provide them with the legal tools to materialize their rights, since it is useless to have the declaration of them, if their materialization continues in the heads of adults, who could also be their possible violators.

Applying the Constitution above the law for judges is a challenge. If the rule is in force and was issued by those who have the power to do so and through the correct procedure, they are forced to apply it, so reforming the system is indispensable, and doing so through the legislative process, is even more so.

If in Colombia children and adolescents are allowed to file tutela actions directly, which implies an exercise of autonomy, due process, and legitimacy to act, there are fewer and fewer reasons not to allow them to file other types of lawsuits under exactly the same postulate: it will be a judge of the Republic who determines whether or not they have the right they claim. since the exercise of the action, access to the

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administration of justice, does not imply, by the mere fact of being a minor and its reinforced protection, that every demand has to be satisfied, since like any other inhabitant of the territory who makes use of these rights, he may find an unfavorable response from the judge when he finds no reason in his claim or evidence to support his allegation.

Forming free citizens, aware of their rights and defense mechanisms, should not make the educational system feel threatened, but rather enhance school processes, because ultimately a guarantor educational system does not have to fear that its students know the means to defend their rights, on the contrary, with this they guarantee increasingly capable citizenships, supportive, respectful and inclusive.

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