

The Principle of Good Faith in the Acts of the Administration

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Abstract:

The principle of good faith constitutes one of the fundamental pillars of the Colombian legal system and serves as an essential guideline for the actions of both public authorities and private individuals. This article analyzes the constitutional, legal, and jurisprudential foundations of the principle of good faith, emphasizing its role as a general principle of law, a constitutional guarantee, a presumption in favor of individuals, and a mechanism for protecting legal certainty and citizens' rights. Through a doctrinal and legal analysis based on constitutional provisions, legislation, judicial precedents, and specialized legal literature, the study examines the evolution of the principle in both public and private law. Particular attention is given to its application in administrative actions, public procurement, and contractual relations, highlighting its function in promoting transparency, trust, fairness, and legal stability. The findings indicate that good faith not only guides the interpretation and integration of legal norms but also limits arbitrary administrative actions and strengthens the relationship between the State and citizens. The study concludes that the constitutional recognition of good faith as a presumption and legal obligation reinforces administrative legitimacy, promotes efficient public administration, and protects individuals against abuses of public power, making it an indispensable principle for the consolidation of the rule of law.

Keywords: Good faith; administrative law; constitutional principles; public administration; legal certainty; public procurement; constitutional guarantees; rule of law.

INTRODUCTION

Good faith is enshrined as a constitutional canon in Article 83 of the Constitution, according to which "[t]he actions of individuals and public authorities must adhere to the postulates of good faith, which shall be presumed in all the actions that they take before them." In this regard, the Constitutional Court in Judgment C-892 of 2001 said: "In the Colombian legal system, good faith is recognized as a general principle of law through which the ethical and social value of trust is adopted. This principle is expressly enshrined in Article 83 of the Political Charter and, through it, individuals and public authorities are required to adhere to the postulates that guide them — loyalty and honesty — establishing it as a presumption in all the actions that "they carry out before them."

Good faith - or *bona fides* - is a general principle of law that radiates from all legal relationships, and fundamentally means rectitude and honesty in the treatment of people in a given social and legal situation. In other words, it is the average ethics of behavior between individuals and between them and the state with an impact on the world of law, it rests on trust regarding the just, upright, honest and loyal conduct of the other, and it constitutes a behavior that is required of all as a moral and legal duty proper to human and business relations. Moreover, good faith, as a principle, incorporates the ethical value of trust and protects it, bases the legal system, serves as a channel for its integration and informs the interpretative work of the law. In the field of contracting, it translates into the obligation of reciprocal rectitude and honesty that the parties must observe in the conclusion, interpretation and execution of legal transactions, that is, the fulfillment of the duties of fidelity, loyalty and correctness both in the acts, dealings or preliminary conversations aimed at preparing the production or formation of the contract, and during the course and termination of the contractual legal relationship already established. In fact, in private law, article 1603 of the Civil Code establishes that contracts must be entered into in good faith; and Articles 835, 863 and 871 of the C.co indicate that good faith will be presumed, that the parties must proceed in the pre-contractual stage in good faith free of fault - qualified - under penalty of compensating damages, and that contracts must be entered into and executed in good faith, respectively. Thus, in matters of public procurement, good faith is considered as a model or criterion of attitude and conduct, which must precede the contract, remain during its execution and last after its fulfillment. Law 80 of 1993 incorporates this general principle in article 5, no. 2, by which the contractors must act with loyalty and good faith in the different stages of the contract, avoiding delays and obstacles that may arise; in art. 23 when it provides that the actions of those involved in government contracting will be governed by the general principles of contracting, among which is that of good faith; in addition, in Article 28 in which it established that this principle shall be taken into account in the interpretation of the rules of state contracts, the procedures for the selection and selection of contractors and the clauses and stipulations thereof. Therefore, limited to the administrative actions of contractual selection, good faith imposes on the Administration and on those interested in contracting with the State a procedure characterized by mutual trust, diligence, prudence and collaboration in the construction of the legal link for the satisfaction of the collective need and public interest that is pursued with State contracting. This general principle is fundamentally developed in the process of forming state contracts through the principles of transparency and economy, such as the duties of the administration, among others, to prepare a list of conditions that contains objective, fair, clear and complete rules that do not mislead, to specify the cost and quality of the goods, necessary works and services, not to establish conditions that are impossible to comply with, nor exemptions from liability for the data provided (24 No. 5 of Law 80 of 1993); To grant the stages and opportunities for the interested parties to know and dispute the reports, concepts and decisions that are submitted or adopted, including placing the files at their disposal (art. 24 paragraphs 2 and 3 *ibid.*)

Likewise, jurisprudence has indicated that the acts and conducts validly expressed by the administration or the proponents cannot be ignored, because they incur the prohibition of *venire contra factum proprium* *nom valet*, by virtue of which it is not lawful for people to come against their own acts, a disregard that is not compatible with the principle of good faith.

The violation of good faith entails the non-obtaining of the rights in which it is a requirement, or the invalidity of the act and, of course, the obligation to repair the damage caused by a conduct so qualified, with the consequent compensation for damages. NOTE FROM THE RAPPOREUR: See judgment of April 22, 2006, exp. 8830; Judgment of April 21, 2004, exp. 12.960

Good faith as a general principle of law.

Good faith as a general principle of law entails the etiology within this dissertation. Before explaining good faith as a principle, it is essential to define what a principle is, so that the general principles of law are maxims or propositions and even aphorisms of a logical nature that are the basis of the

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positive order. They are "ideas, ethical postulates, or fundamental criteria, basic or not, that condition and guide the creation, interpretation and integration of the written legal system (legal and jurisprudential) and customary." del Vecchio thinks that general principles are "supreme truths of the ingenere law, that is, those logical and ethical elements of law, which, because they are rational and human, are virtually common to all peoples."

Matilde Ferreira Rubio conceives them as "guides or ideas-forces with their own normative content, which collect in schematic form the fundamental orientations of the specific reality of the juridical."

According to Hernán Valencia Restrepo, the general principles of law are "fundamental, exhaustive, universal, topical, axiological, implicitly or explicitly positive norms, which serve to create, interpret and integrate the legal system" monarchical – he teaches – which comes from *nomos* (law or right) and *archai* (principles), it is science of legal principles, which can also be called (principlialistic). they are fundamental because they are the foundation or source; they are imperative and of interest to public order; universal, because they are general and because they regulate not only one case but several or many and apply to the whole legal system or to one or more branches of institutions or norms of it; topical, because they are commonplaces; axiological and deontological norms, since they deal with the ought to be of the law; and they are explicit or implicitly positive, because they are expressly consecrated or applied by a state oregano or because they are extracted or induced from particular norms.

Miguel Realé, on the other hand, states that a principle is "a logical statement that admits a condition or basis of validity of the other statements that constitute a certain field of knowledge." The same author considers that principles are omission, when they are valid in all forms of knowledge, such as the principle of identity or sufficient reason (plurivalent).

When they are applied to various fields of knowledge as the principle of causality; and (monovalent), if they only have value in a specific science. The general principles of law are monovalent and in turn can refer to the entire legal order or be the foundation of a certain branch of law. For example, the existence of general principles of constitutional law can be predicated; and likewise general principles of civil law; or, finally, principles of family law.

The conception of principles is diverse from the point of view of positivism and from the approach of natural law. Positivists consider them guidelines of a legal system, that is, criteria that serve as a foundation and inform the positive law of each country. Natural law scholars believe that universal and eternal criteria of justice, with a supra-positive character, are universal legal truths dictated by right reason, which are outside the legal system of a country, therefore, prior to and external to positive law.

Apparently, principles are superior rules or fundamental truths that essentially fulfill three related functions, which are to serve as a source of law, of integration in case of gaps or voids and of interpretative means.

There is no doctrinal consensus on the functions of the principles, but in general they are attributed to be criteria that inform the legal system, since they give it life, legitimize it; be a criterion of interpretation and even limit subjective rights (this is how the abuse arose, by restricting the idea that no one harms who joins his right (*damno non facit qui iure suo utitur*), today subject to the principle that rights are relative, their use is of interest to the and must be exercised for the purpose for which they were intended); and, finally, one of integration, that is, when there are legal gaps, especially when these occur as a result of a social change or of another order.

The creative function consists in the principles indicating the guidelines that must be followed in the elaboration, modification and repeal of the norms. for Hanibal Torres Vásquez, when it comes to the creative function "principles are the material source of law. When they fulfill the integrating function, they are a formal source."

On the other hand, good faith is a concept that served to soften the rigors of Roman law and to structure putative marriage in canon law, it is today a general principle that, due to its express consecration in the Constitution, has the rank of citizen guarantee, with validity in both public law and private law. Roman law seems to have known the *fides*, which was what honor or virtue is today. "It has been said that it was during the period of pre-classical Roman jurisprudence that the birth and enunciation of the principle of good faith took place, attributing this to Quintus Mucius Sevola."

In summary, with respect to the effects or functions of good faith as a principle, it can be said that it serves to correct, supply and assist in the creation, interpretation and application of general and abstract and individual and concrete legal norms, both in private law and in public law. And it is precisely at this point that it is essential to delve into this dichotomy of private law and public law, since it is certainly in these two branches that this principle acquires greater practical roots at the time of its application.

The principle of good faith in private law "due to its relative lack of legal typicity" (unlike administrative law in which it is enshrined in regulations), is not directly applicable, but subsidiarily, when there is no special rule that exactly regulates the case in question. However, in the law of contracts There are some precepts that order the execution of civil contracts in good faith, Article 1.603 of the Civil Code "Contracts must be executed in good faith, and therefore bind only what is expressed in them, but all things that emanate precisely from the nature of the obligation, or that by law belong to it." So it is not good faith to limit oneself to compliance with the written text of a contract when it must be understood that it obliges something more than the literal.

This norm penetrates the contract and is installed in it, by virtue of Article 38 of Law 153 of 187 "In every contract the laws in force at the time of its execution shall be extended ." Therefore, Article 1.603 distinguishes perfectly between two things: (which emanate precisely from the nature of the obligation) then the former differ from the positive norms contained in the supplementary regime of the respective contract. and (the things that by law belong to it) the things of the nature of the contract are usual practices and the standards proper to honest traffic between those who make the respective legal business.

Likewise, the execution and execution of commercial contracts in accordance with good faith, total, article 863 of the Commercial Code "the parties must act in good faith free of fault in the pre-contractual period, under penalty of compensating the damages caused." This circumscribes a notable pre-contractual connotation, which is covered by commercial law, On the other hand, there is Article 871 of the same Code, which states the following: "Contracts must be entered into and executed in good faith and, consequently, they shall be binding not only on what is expressly agreed therein, but also on everything that corresponds to the nature of the same, according to law, custom or equity natural." which allows the direct and not subsidiary application of contractual good faith, which constitutes the most important manifestation of the general principle of mutual trust in legal life.

As for applications by subsidiary means, there is Article 768 of the Civil Code which reads "Good faith is the awareness of having acquired ownership of the thing by legitimate means free of fraud and any other vice. Thus, in the case of title transfers, good faith implies the persuasion of having received the thing from the person who had the power to alienate and of not having been fraud or any other defect in the act or contract.

a just error in matters of fact is not opposed to good faith. but the error in matters of law constitutes a presumption of bad faith, which does not admit proof to the contrary." This norm, as well as Article 769 of the same Code, "Good faith is presumed, except in cases in which the law establishes the contrary presumption. In all others, bad faith must be proven." were declared enforceable by the Constitutional Court, through judgment 1, 12, 1994, in which the importance of the principle of good faith was recognized, in what the ruling called its "active aspect or duty to act with loyalty in legal relations" and its "passive aspect or right to expect others to act in the same way". The ruling said that

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when it is prohibited to invoke ignorance of the law as an element of good faith, what is done is to repeat that the law is supposed to be known to all, Article 9 of the Civil Code: "ignorance of the laws does not serve as an excuse" and applies to everyone, a matter that does not contradict the Constitution.

As far as the degrees of good faith are concerned, from the private angle, two are discovered: simple good faith, on the one hand; and qualified good faith, on the other, which is creative good faith or good faith free of fault.

In a ruling issued on 23 June 1958, the Supreme Court of Justice determined that while good faith requires only conscience (to act without fraud, for example), qualified good faith requires conscience and certainty. Moreover, this means absence of fault, which is as much as a maximum of qualities, according to the expression used in another ruling of the same Court: It is not enough that the person who invokes good faith..."has been aware that he is negotiating with the true heir or with the true owner, but it is necessary that this belief is not the result of imprudence or negligence that would not have been incurred by a wise and diligent person.

On the other hand, Article 55 of the Substantive Labor Code also imposes that the contract must be executed in good faith. In turn, Article 56 of that work imposes the obligation of fidelity, which the Supreme Court of Justice translated as synonymous with good faith or loyalty, which implies honesty (not simply an honesty of fact) and honesty as soon as one has the full awareness of not cheating, harming or harming.

There are also articles 834 and 835 of the Commercial Code, which contemplate, in their order, rules about the good faith of a representative; the presumption of good faith, even the one exempt from fault and the mandate of the one who alleges bad faith must prove it.

In the same vein, in the French Civil Code, there is a rule according to which legally concluded contracts must be performed in good faith (Article 1134). Another rule establishes that the debtor is obliged to pay damages for breach of the obligation or delay in execution every time he does not justify that the breach comes from an extraneous cause that cannot be imputed to him, even if there has been no bad faith on his part (Article 1147). Therefore, here good faith is looked at from a preferably contractual level, since it is limited to the time of contractual conclusion. And finally, we have the Italian Civil Code, which contains numerous rules on good faith in pre-contractual matters (art 1328 to 1337) and also provides that the contract must be executed in good faith (art 1375).

In summary, there is a part of the civil doctrine that affirms that the principle of good faith was first incorporated in private law and subsidiarily to this in public law, which could not be demonstrated, since it is not relevant to the case, but nevertheless, it can be demonstrated how the general principle of good faith is incorporated in private law in a remarkably polyvalent way, since it entails an aspect of presumption and an aspect of principle that directs the conduct both pre-contractual and contractual.

Thus, the general principles of law contain a relevant value in law, since they have preceded its formation and constitute the way to introduce the requirements of justice in the relations between the administration and the administered.

Certainly, this legal discipline is a development of the principles of legality and separation of public powers that dominate the configuration of the State since the liberal revolution of the 18th century, as a technique for guaranteeing freedom; It therefore has its source in postulates of material justice and not in a complication of positive norms, and this is precisely the key that must guide its subsequent development, mainly by means of jurisprudence, in the countries that were fortunate enough to have a court of justice such as the Conseil d'Etat, that in its prodigious creative work resorted to the general principles of law for the construction of its most brilliant legal institutions, not only to fill the gaps by means of normative integration, but also to protect the freedom of citizens against the excesses of public power. in other countries that have not been fortunate enough to have a court of the quality of

the Conseil d'Etat, it has been the doctrine of the jurists, influenced to a large extent by French formulas, which has made use of legal principles to indicate to the legislator the bases of the administrative regime.

At present, the value of the general principles of law is much higher than it was at the time of the emergence of this legal discipline, since the growing interventionism of the State and its public administration in the social sphere has meant a considerable increase in tensions and conflicts between the prerogatives of public power and the freedom of citizens, which is why it is essential to apply guidelines of material justice to prevent the legal supremacy of the State from degenerating into arbitrariness and to guarantee the rights and freedoms of those administered.

GOOD FAITH AS A PROTECTION MECHANISM.

As mentioned above, this part of the dissertation refers to the constitutional foundation of the principle of good faith, which appears within the constitutional text as a guarantee of protection – as it is intended to be understood for the practical purposes of this dissertation – so that ultimately it would be a mechanism of protection for individuals, so that, as such, it fulfills its function of limiting the rights of others, among others.

An analysis of comparative law was carried out in order to observe the constitutions of three countries close to Colombia: "Bolivia (Bolivia) and the constitutions of the country's national constitution shall not be understood as a denial of other unstated rights and guarantees arising from the sovereignty of the people and the republican form of government. Article 35.), Ecuador (The State guarantees to all individuals, men or women subject to its jurisdiction, the free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights set forth in the declarations, covenants, conventions and other international instruments in force. Article 44), Venezuela (any act of the public power that violates or impairs the rights guaranteed by this Constitution is null and void. Article 46.)" As can be seen, the only common pattern that all these Constitutions have is that none of them makes inferences to the principle of good faith in their articles of protection mechanisms, while the Colombian one does, but nevertheless from the Political Constitution of 1991, since, in the previous Constitution of 1886, good faith was not consecrated as a principle.

Good faith as a general principle of law permeates the entire legal system – that is quite clear. The characteristics of modern life, with its increasing complexity, require that this principle not simply be a criterion of interpretation and a limit on the exercise of rights, but its consecration as a guarantee for individuals. Thus, within the mechanisms for the protection of rights, a distinction can be made between those that aim to make the actions of the administrative authorities effective, such as the prohibition of red tape, Article 84, and the principle of good faith, Article 83, which also apply in the sphere of judicial proceedings.

Article 83 expressly refers to relations between individuals and authorities, and that such relations, as far as good faith is concerned, are governed by two principles: the first, the obligation of individuals and authorities to act in accordance with the postulates of good faith; the second, the presumption, simply legal, that all the actions of individuals before the authorities are carried out in good faith.

As a presumption in favor of individuals, good faith aims to guarantee the rights of individuals in all those circumstances in which their exercise is subject to the action of the authorities. Despite being a necessary assumption of the proper development of the relations of individuals with the authorities, in the processing of the proceedings that people must carry out before official offices, trust was replaced by general suspicion towards the individual. "Such reluctance to believe in the honest and legal conduct of citizens hinders their access to the State" even to the point of making the exercise of rights null and void, and at the same time renders the functioning of the State ineffective. In this context, the constitutional norm aims to restore a normal dynamic in the State, providing in favor of individuals the legal fiction according to which all their actions are in accordance with the law.

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Related to the procedural guarantee of the presumption of innocence, the presumption of good faith means that the proceedings of individuals before the authority are considered in advance as alien to any legally reprehensible intention. Of course, "officials can reasonably review its content and the law can create procedures to verify what is stated by individuals, which can lead to the facts and their proof distorting this presumption", because otherwise, in the *contrario sensu*, it would be absurd to think that all people, by the simple fact of being private individuals, always and without exception act in accordance with the law, good customs and public order.

The presumption established in favor of individuals implies that the authorities must, among other obligations, consider as legitimate the documents that a person accompanies to their requests. Among them, the public documents provided must be assumed to be true and valid, and constitute full evidence, in accordance with Article 264 of the Code of Civil Procedure, which establishes that they "attest to their execution, their date and the statements made therein by the officials who authorize them."

Strictly speaking, good faith does not require normative consecration, but its presumption with respect to individuals is made explicit here due to the situation of inferiority in which they find themselves vis-à-vis the public authorities and as a mandate for them in the sense of looking at the administered primarily as the recipient of a service activity.

This mandate, which would seem unnecessary because it is obvious, "would be aimed at combating that absurd world of bureaucracy, in which principles are inverted and in which, to give an example, the physical presence of the interested party is not enough to receive a pension, but a certificate of authority is necessary to prove his survival, which, sometimes, has greater value than personal presentation." In this same sense, naturally, it is debatable whether the fact of enshrining the rule of good faith in the Constitution contributes to giving it greater validity in the life of the relationship, or reduces the frequency of behaviors that contradict it.

Even though it is necessary to protect this presumption of good faith against the individual, which becomes for these instances a guarantee, exceptionally, the law may establish the opposite presumption, that is, the presumption of bad faith. This is what happens in rule 3 of article 2531 of the Civil Code, according to which, with regard to the extraordinary prescription, despite the presumption, in general, of good faith (rule 2a. art. 2531), "... the existence of a title of mere possession will presume bad faith, and will not give rise to the statute of limitations, unless these two circumstances occur..."

Article 769, therefore, in accordance with Article 66 of the same Civil Code, provides that the law may determine "certain antecedents or known circumstances" from which bad faith can be deduced. Legal presumption against which there will or will not be the possibility of proof against it, depending on whether it is simply legal or legal.

Article 769, moreover, due to its location in the Civil Code, refers to relations between individuals. This is even more obvious if one takes into account that this rule is part of Chapter I of Title VII of Book Two, a chapter that deals with "Possession and its different qualities". Therefore, "it is evident that Article 769 does not violate, nor could it violate, Article 83 of the Constitution."

But, on the other hand, it should be noted that Article 769 does not establish a presumption of bad faith. No: it is limited to ratifying the general presumption of good faith, and to providing that, exceptionally, the law may establish the contrary presumption, therefore, the legislator can establish the presumption of bad faith without violating the Charter.

Therefore, the presumption of bad faith that now prevails, in practice becomes a heavy burden for honest citizens, for whom, following Jesús González Pérez: "the administration is nothing more than a set of windows where you queue". This Spanish treatise writer illustrates the unfortunate picture of the administration against the individual. Which is perfectly compatible with what Hermann Hesse affirmed: you don't have to be condemned to know this strange and infernal world of offices,

documentation, and minutes.

Of all the hells that man has had the whim to create for himself, this has always been the most refined. You simply intend to move to another place, get married or manage a passport or a certificate of citizenship and you are already in that hell, you have to spend hours and bitter hours in the rooms of unbreathable air of that paper world, to suffer interrogations from annoying or unbearable people who howl, in which you only find disbelief for your simplest and most truthful statements and who also treat you like a child or a child. a criminal."

In summary, although the general rule in Colombia is that good faith is presumed in the actions and actions of the parties in any legal relationship or bond, there are cases where, exceptionally, bad faith is presumed as the case previously demonstrated, however, without this, to the detriment of the spirit of the Political Constitution, in total, that "Good faith is presumed, except in cases where the law establishes the contrary presumption." In all other cases, bad faith must be proven." Based on the foregoing, it could be questioned, then, is it necessary for the authorities to act before the individual with a spirit of service in the solution of his legitimate claims? The answer is available to the reader of this dissertation.

As an obligation of the authorities, good faith "imposes on public officials to act in a manner consistent with the constitutional principles of efficiency, respect and guarantee of rights (Articles 1 and 2 of the Political Constitution.\"", so it can be said that good faith aims at the humanization of relations between officials and individuals – as explained above. for it can lead the former to act with "loyalty, honesty, and trust." At the same time, as an obligation of the authorities, good faith presupposes that the authorities act in accordance with the principles that guide the administrative function, such as those of equality, morality, efficiency, economy, speed, impartiality and publicity (Article 209 of the Political Constitution).

Jurisprudence has developed some general criteria – certainly not exhaustive – in the development of which it can be established when the action of an authority is contrary to good faith, and therefore fails to comply with the obligation to act in accordance with it. Such a fact would be faced – as Dr. Barreto affirms – when the behavior of the official "is not the rational and upright conduct that could be expected of a person in the same situation" – which was seen above-; when it does not conform to the tests of objectivity and reasonableness; when it turns out to be contradictory; when the specific situation of the person concerned is not taken into account; when the decision is not adopted at the time timely; when their response is not proportional; when the state entity denies its own acts; when there are unjustified delays; when adequate or suitable means are not adopted to restore a right or when power is abused.

Specific cases of failure by the authorities to comply with their obligation to act in good faith include the failure to study and rule on a petition, which also gives rise to a violation of the right to petition (article 23 of the Constitution), and the imposition of unexpected burdens or additional requirements for the exercise of a right when there was a general regulation. An action that also ignores Article 84 of the Constitution.

On the other hand, with regard to the duty of individuals, the principle of good faith complements the enunciation of the duties provided for in Article 95 of the Charter. Good faith gives rise to duties in those who act as parties in the relationship with legal significance, which leads to the recognition of the rights of others and to avoid the abuse of one's own right. "In this way, the principle of good faith acts as a limit to the illegitimate exercise of rights." The possibility of trusting the other members is a necessary condition for coexistence, for the smooth running and functioning of relations between individuals – including economic relations – for peace and legal security

In short, this obligation or duty in terms of the procedure and disposition concerning both individuals

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and public authorities and officials, serves as a limit for the actions of both in the legal relations in which they interact with each other. It is believed that there is no need to delve further into this issue for the simple reason that since this is a problem related to an obligation, it is perfectly solvable with the effective fulfillment of it – this seen from a purely pragmatic point of view – so it is not necessary to give more specifics about this duty. However, and it is worth clarifying, this characteristic of seeing good faith as a duty or obligation, is nothing more than one more perspective from which Article 83 of the Colombian Political Constitution can be appreciated.

Good Faith as a Presumption.

As a presumption in favor of individuals, good faith aims to guarantee the rights of individuals in all those circumstances in which their exercise is subject to the action of the authorities. Despite being a necessary assumption of the proper development of the relations of individuals with the authorities, in the processing of the proceedings that people must carry out before official offices, trust was replaced by general suspicion towards the individual. "Such reluctance to believe in the honest and legal conduct of citizens hinders their access to the State" even to the point of making the exercise of rights null and void, and at the same time renders the functioning of the State ineffective. In this context, the constitutional norm aims to restore a normal dynamic in the State, providing in favor of individuals the legal fiction according to which all their actions are in accordance with the law.

Related to the procedural guarantee of the presumption of innocence, the presumption of good faith means that the proceedings of individuals before the authority are considered in advance as alien to any legally reprehensible intention. Of course, "officials can reasonably review its content and the law can create procedures to verify what is stated by individuals, which can lead to the facts and their proof distorting this presumption", because otherwise, in the *contrario sensu*, it would be absurd to think that all people, by the simple fact of being private individuals, always and without exception act in accordance with the law, good customs and public order.

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Strictly speaking, good faith does not require normative consecration, but its presumption with respect to individuals is made explicit here due to the situation of inferiority in which they find themselves vis-à-vis the authorities and as a mandate for them in the sense of looking at the administered primarily as the recipient of a service activity.

This mandate, which would seem unnecessary because it is obvious, "would be aimed at combating that absurd world of bureaucracy, in which principles are inverted and in which, to give an example, the physical presence of the interested party is not enough to receive a pension, but a certificate of authority is necessary to prove his survival, which, sometimes, has greater value than personal presentation." In this same sense, naturally, it is debatable whether the fact of enshrining the rule of good faith in the Constitution contributes to giving it greater validity in the life of the relationship, or reduces the frequency of behaviors that contradict it.

Even though it is necessary to protect this presumption of good faith against the individual, which becomes for these instances a guarantee, exceptionally, the law may establish the opposite presumption, that is, the presumption of bad faith. This is what happens in rule 3 of article 2531 of the Civil Code, according to which, with regard to the extraordinary prescription, despite the presumption, in general, of good faith (rule 2a. art. 2531), "... the existence of a title of mere possession will presume bad faith, and will not give rise to the statute of limitations, unless these two circumstances occur..." And what happens, moreover, in the final paragraph of Article 768, relating to

error of law, a paragraph already declared enforceable by this Court.

Article 769, therefore, in accordance with Article 66 of the same Civil Code, provides that the law may determine "certain antecedents or known circumstances" from which bad faith can be deduced. Legal presumption against which there will or will not be the possibility of proof against it, depending on whether it is simply legal or legal.

Article 769, moreover, due to its location in the Civil Code, refers to relations between individuals. This is even more obvious if one takes into account that this rule is part of Chapter I of Title VII of Book Two, a chapter that deals with "Possession and its different qualities". Therefore, "it is evident that Article 769 does not violate, nor could it violate, Article 83 of the Constitution."

But, on the other hand, it should be noted that Article 769 does not establish a presumption of bad faith. No: it is limited to ratifying the general presumption of good faith, and to providing that, exceptionally, the law may establish the contrary presumption, therefore, the legislator can establish the presumption of bad faith without violating the Charter.

Therefore, the presumption of bad faith that now prevails, in practice becomes a heavy burden for honest citizens, for whom, following Jesús González Pérez: "the administration is nothing more than a set of windows where you queue". This Spanish treatise writer illustrates the unfortunate picture of the administration against the individual. Which is perfectly compatible with what Hermann Hesse affirmed: you don't have to be condemned to know this strange and infernal world of offices, documentation, and minutes.

Of all the hells that man has had the whim to create for himself, this has always been the most refined. You simply intend to move to another place, get married or manage a passport or a certificate of citizenship and you are already in that hell, you have to spend hours and bitter hours in the rooms of unbreathable air of that paper world, to suffer interrogations from annoying or unbearable people who howl, in which you only find disbelief for your simplest and most truthful statements and who also treat you like a child or a child. a criminal."

In summary, although the general rule in Colombia is that good faith is presumed in the actions and actions of the parties in any legal relationship or bond, there are cases where, exceptionally, bad faith is presumed as the case previously demonstrated, however, without this, to the detriment of the spirit of the Political Constitution, in total, that "Good faith is presumed, except in cases where the law establishes the contrary presumption." In all other cases, bad faith must be proven." Based on the foregoing, it could be questioned, then, is it necessary for the authorities to act before the individual with a spirit of service in the solution of his legitimate claims? The answer is available to the reader of this dissertation.

As an obligation of the authorities, good faith "imposes on public officials to act in a manner consistent with the constitutional principles of efficiency, respect and guarantee of rights (Articles 1 and 2 of the Political Constitution.)), so it can be said that good faith aims at the humanization of relations between officials and individuals – as explained above. for it can lead the former to act with "loyalty, honesty, and trust." At the same time, as an obligation of the authorities, good faith presupposes that the authorities act in accordance with the principles that guide the administrative function, such as those of equality, morality, efficiency, economy, speed, impartiality and publicity (Article 209 of the Political Constitution).

Jurisprudence has developed some general criteria – certainly not exhaustive – in the development of which it can be established when the action of an authority is contrary to good faith, and therefore fails to comply with the obligation to act in accordance with it. Such a fact would be faced – as Dr. Barreto affirms – when the behavior of the official "is not the rational and upright conduct that could be expected of a person in the same situation" – which was seen above-; when it does not conform to the tests of objectivity and reasonableness; when it turns out to be contradictory; when the specific

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situation of the person concerned is not taken into account; when the decision is not adopted at the time timely; when their response is not proportional; when the state entity denies its own acts; when there are unjustified delays; when adequate or suitable means are not adopted to restore a right or when power is abused.

Specific cases of failure by the authorities to comply with their obligation to act in good faith include the failure to study and rule on a petition, which also gives rise to a violation of the right to petition (article 23 of the Constitution), and the imposition of unexpected burdens or additional requirements for the exercise of a right when there was a general regulation. An action that also ignores Article 84 of the Constitution.

On the other hand, with regard to the duty of individuals, the principle of good faith complements the enunciation of the duties provided for in Article 95 of the Charter. Good faith gives rise to duties in those who act as parties in the relationship with legal significance, which leads to the recognition of the rights of others and to avoid the abuse of one's own right. "In this way, the principle of good faith acts as a limit to the illegitimate exercise of rights." The possibility of trusting other members is a necessary condition for coexistence, for the smooth running and functioning of relations between individuals – including economic relations – for peace and legal certainty.

In short, this obligation or duty in terms of the procedure and disposition concerning both individuals and public authorities and officials, serves as a limit for the actions of both in the legal relations in which they interact with each other. It is believed that there is no need to delve further into this issue for the simple reason that since this is a problem related to an obligation, it is perfectly solvable with the effective fulfillment of it – this seen from a purely pragmatic point of view – so it is not necessary to give more specifics about this duty. However, and it is worth clarifying, this characteristic of seeing good faith as a duty or obligation, is nothing more than one more perspective from which Article 83 of the Colombian Political Constitution can be appreciated.

ARTICLE 65. OF THE RESPONSIBILITY OF THE STATE. "The State shall be liable for any unlawful damages attributable to it, caused by the action or omission of its judicial agents."

According to the Constitutional Court:

"The rule of law is based on two great axioms: the principle of legality and the patrimonial responsibility of the State. The guarantee of the rights and freedoms of citizens is not only preserved by requiring public authorities to comply with the law in their actions, but it is also essential that if the State, in the exercise of its powers of intervention, causes unlawful damage or injury, it should make full reparation for it. When citizens turn to the contentious-administrative jurisdiction to demand justice, they are not so much interested in obtaining a declaration of nullity of an administrative act as in the imposition of a sentence on the State so that it is fully compensated for an unlawful injury or damage. (Judgment C-832 of August 8, 2001. Plaintiff: Andrés Caicedo. Reporting Judge Dr. Rodrigo Escobar Gil)

CONCLUSION

To conclude, it is necessary to refer to the following conclusions:

DAY-to-DAY, In the daily occurrence of private activity, people who negotiate with each other assume certain premises, among which is precisely the postulate that is enunciated, since to think from the beginning of the bad faith of the other would be to give life to a flawed relationship. Individuals must conduct themselves in all their actions according to the principle of good faith at the negotiating level, The parties must behave loyally.

The abuse of dominant positions breaks the contractual balance, no matter how imperfect the relations between public authorities and individuals may be, these must be balanced with a categorical imperative, through which both coexistence and negotiations and contracting do not become a battlefield where mistrust predominates. Therefore, the Colombian legislator was very right to enshrine the presumption of good faith within the constitutional sphere, since this principle limits,

proportionates, adjusts, balances, adjusts and stabilizes the legal relations of both individuals among themselves and between them and the public authorities.

Administrative disorder. Although it sounds illogical, in Colombia it is more normal than abnormal for documents that are arriving to be filed or for writings and fundamental documents that come from a citizen, who formulates his request, to be lost, with the urgency of being attended to, which generally does not happen, all because the level of organization of the offices and offices, in general they are fateful of chaos.

Incompetent officials. Part of the aforementioned administrative disorder is due to the fact that in many cases there are of the type of official, called secretary, legal, assistant, that everything that arrives at the offices and requires to be answered in the natural order of arrival, is filed, and never answered again, perhaps due to inexperience, or perhaps due to "bad faith" of said official. It is variable, the truth is, that in the same way the nonconformity is generalized and of course, the subsequent lawsuits or guardianships, manifesting the figure of administrative silence.

In summary, we must say that Good Faith is a protection mechanism that guarantees the rights of individuals; as a presumption applicable to pre-contractual, contractual and non-contractual conduct; and as an obligation and a duty, the observance of which can enliven legal relations.

That Article 83 of the Charter not only enshrines the principle of good faith, and ratifies that it is presumed, but also states that the importance of the rule is that it is a direct source of rights and obligations. It is no longer merely a principle of integration and interpretation of the applicable law, but a true "legal commandment from which a series of practical consequences are derived" unfortunately we must say that in theory as always everything is amply detailed, but in the application, the excesses increase day by day, with a figure that is apparently as simple as the management of responding and processing requests or petitions.

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