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Investigating the Role of Culture in Legal Practices in Spain

Investigando el papel de la cultura en las prácticas jurídicas en España

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Abstract

Law, as the science that organizes and regulates society, will inevitably change its method and approach with the change in social relations. Developments, especially in the field of public law, with the speed with which the laws adopted in the legislative process cannot be adapted and updated with them, have made other sources of law, such as judicial procedure, have different functions.

Resumen

El derecho, como ciencia que organiza y regula la sociedad, cambiará inevitablemente de método y enfoque con el cambio de las relaciones sociales. La evolución, especialmente en el campo del derecho público, con la rapidez con que las leyes adoptadas en el proceso legislativo no pueden adaptarse y actualizarse con ellas, ha hecho que otras fuentes del derecho,

The following article seeks to examine and analyze the question of whether culture has influenced the formation of judicial procedure in Spanish public law. And in case of a positive answer, in what form? The results of the positive response to the developments in the contemporary world and their impact on the science of law are the judicial procedure in three parts: a) creating and establishing new norms, b) supplementing the existing norms in the legal system, c) protect the rights and freedoms of individuals, which have been recognised as a consequence of the status of judicial proceedings among the sources of public law and its promotion.

Keywords: Rights and Freedoms; Public Law; Judicial Procedure; Rulemaking; Norm.

como el procedimiento judicial, tengan funciones diferentes. El siguiente artículo pretende examinar y analizar la cuestión de si la cultura ha influido en la formación del procedimiento judicial en el derecho público español. Y en caso de respuesta afirmativa, ¿en qué forma? Los resultados de la respuesta positiva a los desarrollos del mundo contemporáneo y su impacto en la ciencia del derecho son el procedimiento judicial en tres partes: a) crear y establecer nuevas normas, b) complementar las normas existentes en el sistema legal y c) proteger los derechos y libertades de las personas, que han sido reconocidos como consecuencia del estatus de los procedimientos judiciales entre las fuentes del derecho público y su promoción.

Palabras clave: Derechos y libertades; Derecho Público; procedimiento judicial; reglamentación; norma.

1. INTRODUCTION

Jurisprudence is one of the social sciences and is a function of the changes that have taken place in society. The sources of legal science are definite, but the evolution of society determines the evolution of these sources. As an example, the avoidance of dictatorial regimes led to the tendency of society towards the rule of law and to make the source of the law in law more prominent. In fact, the main concern at this time was the end of lawlessness and dictatorship. Subsequently, with the establishment of democratic systems, the issue of development became a major concern of societies and the need to change laws was felt in the wake of social change. Community

developments were highlighted. Numerous economic, social, cultural, and political developments such as globalization, development of communications and technologies and increasing pluralism in these areas are among the factors influencing this prominence.

Public law has also had the greatest influence in this field due to its dynamic nature and subject matter (sovereignty and power). The jurisprudence established by authorities such as the Constitutional, Administrative, and Financial Judges in domestic public law and institutions such as the International Court of Justice, the European Court of Justice, and the American Court of Human Rights in international public law has gained considerable prominence. It is in domestic societies and in the international system. The French Constitutional Council recognizes the maintenance of public order, which is not enshrined in the constitution of this country, as having a value equal to the principles of the Constitution. And the Supreme Court of the United States of America on several occasions declares the United States government fully responsible for the damages caused to the citizens of this country; These and similar cases occur in the field of jurisprudence, which go beyond the traditional jurisdiction to resolve disputes and interpret the law. Research literature on the subject is scarce, and the only work that has been discovered by authors in this field is part of the book The Power of Judicial Procedure by Michael GERHARDT[1], a professor of constitutional law at the University of North Carolina. The present is trying to study the subject with a different perspective.

Accordingly, the present article seeks to answer the question of whether culture has influenced the formation of judicial procedure in Spanish public law. And in case of a positive answer, in what form? These cases will be explained by using the relevant legal sources and developments in the field of public law with a descriptive-analytical approach. It is important to note that the material will be used to refer to the performance of various judicial authorities in the field of public law, and since it is not possible to describe all the relevant institutions, it is appropriate to focus on the French Constitutional Council and The Supreme Court of the United States will be the European Court of Human Rights, the International Criminal Court, and the International Court of Justice.

2. THE CONCEPT AND PLACE OF JUDICIAL PROCEDURE IN PUBLIC LAW

What comes to mind from a judicial point of view is the performance of judicial institutions and authorities in the field of a subject that has the character of connection and connection with the subject in question. This practice has a special place among legal sources and is among legal sources.

1. GERHARDT, M. 2008: *The Power of Precedent Oxford University Press*.

2.1. *The Concept of Judicial Procedure*

The procedure is defined in words in terms of method, style, and order. Therefore, judicial procedure can be defined in words in the usual way of judicial authorities in a field. In legal terms, jurisprudence refers to a case in which the courts or a group of them follow the same procedure in relation to an issue and the rulings are repeated in such a way that it can be said that if the courts face the said case, the same decision is made. They will take. In this definition, the binding nature of the judicial procedure has been considered. In fact, jurisprudence is a priori decisions that acts as a model for future decisions and use past knowledge to solve current and future problems[2]. In other words, the jurisprudence is the previous decisions that are used as a guide for the current action[3]. In another definition, jurisprudence is defined as a solution that courts typically find for a legal issue in which the voluntary nature of the judicial process is specified. Jean CARBONIER, a French jurist, also sees judicial procedure as a habit of the courts.

- The place of jurisprudence among the sources of public law

Judicial practice has a different place in the sources of public law. After looking at the sources of public law, this issue is examined.

2.1.1. Sources of Public Law

The sources of public law should, as a rule, be sought in the general sources cited for law. Legal sources have been studied in four categories: a) law, b) judicial procedure, c) custom d) doctrine. Most jurists have cited these sources in that order. Some, with a sociological approach, have placed custom at the forefront of these sources[4]. Mentioning the sources of public law has also often been the priority of law over custom approved by jurists. Of course, it should be noted that given the nature of public law and the subject matter of governance and related issues, the sources of public law cannot be limited to the above, and according to some jurists, the sources of public law in two categories: a) Philosophical and political sources (political history - political philosophy), b) Legal sources (law, jurisprudence, procedural sources, and legal teachings) have been classified and studied.

2. SUMMERS, Robert S. and MACCORMICK, Neil (eds.). 1997: *Interpreting precedents: a comparative study*. Ashgate/Dartmouth.

3. DUXBURY, Neil. 2008: *The nature and authority of precedent*. Cambridge University Press.

4. LÉVY-BRUHL, Henri. 1950: «La Science du Droit ou 'Juristique'». *Cahiers internationaux de sociologie*, 1950, 8: 123-133.

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2.1.2. The Place of Judicial Procedure in the Sources of Public Law

In public law, the definition given in the previous speech is also valid from a judicial point of view, and this phenomenon is created by the authorities and the basic, administrative, and financial courts. Among the sources of public law, the judicial procedure has a special place. A point that is worth mentioning in the context of the position and role of judicial procedure in public law sources is the status of judicial procedure among legal sources in different legal systems and in different legal fields. The written legal system argues for the French leadership not recognizing jurisprudence as the source of law, while Common Law emphasizes the role of jurisprudence as one of the main sources of law[5]. This is the general rule of law[6]. But it seems that the role of jurisprudence in the written legal systems in the field of public law is getting closer to the system. The point that distinguishes the jurisprudence in public law from other areas of law is the increase of the power of influence of this legal source and because of the promotion of its position among other sources. In fact, jurisprudence in public law, which is also called procedural sources, can positively or negatively change the entire political legal system of the country. This influential role and position distinguish judicial procedure in contemporary public law from other areas of law.

The judicial procedure has been written in legal systems and in legal fields other than public law, it has been responsible for creating an action in accordance with legal norms, assuming the silence, ambiguity, or conciseness of legal materials.

But in contemporary public law, jurisprudence plays a more important role. In the realm of norms and rules, jurisprudence sometimes creates new norms that are not mentioned in the legal texts and sometimes complements norms in areas where there are shortcomings in those legal texts. Also, jurisprudence in contemporary public law, with regard to the competencies established for the competent institutions in this field, protects the rights and freedoms of individuals, which is rarely seen in other legal fields. The Influence of Judicial Procedure on Contemporary Public Law is such that some experts have spoken of the judicialization of public law areas under the influence of the judicial procedure of the basic and administrative institutions[7]. All of these issues, which will be explored in the next section, indicate a special place of jurisprudence among the sources of public law.

Another point that should be noted in this article is the separation of jurisprudence in the field of domestic law and international law. Domestic public law has judicial bodies that create judicial procedures such as the basic and administrative judge, and in the field of international law, this is the responsibility of international judicial bodies such

5. SUMMERS, Robert S. and MACCORMICK, Neil (eds.). 1997: *Interpreting precedents: a comparative study*. Ashgate/Dartmouth.

6. ALGERO, Mary Garvey. «The Sources of Law and the Value of Precedent, A Comparative and Empirical Study of a Civil Law State in a Common Law Nation». *La. L. Rev*., 2004, 65: 775.

7. FAVOREU, Louis. 1998: *La constitutionnalisation du droit*.

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as the International Court of Justice, the European Court of Human Rights, the American Court of Human Rights, and the United States. Considering the dominance of states and governments in the field of operation of the international legal system, their function in the field of public law is international public law (as opposed to domestic public law). The issues and examples presented in the present article will be examined in accordance with the subject and its subjectivity in the mentioned field in both sections of domestic public law and international public law.

2.1.3. Manifestations of Procedure Prominence in Contemporary Public Law

The jurisprudence created in contemporary public law has had a prominent and significant performance in many areas. The source of this practice should be considered in the numerous changes and developments in various fields of contemporary public law based on the accepted developments in the political, social, economic, and cultural fields of the contemporary world.

2.1.3.1. Founding Role: Creating New Norms and Rules

The first highlight of jurisprudence in contemporary public law is the role of this phenomenon in creating new norms and rules that have not previously been relevant to jurisprudence, especially in legal systems. The fact that jurisprudence can directly introduce norms into the case law system is a completely new function that contemporary public law has recognized for jurisprudence. This is often done through the «fund mentalization» tool. Fundamentalism means incorporating some norms and rules into a number of principles of the constitution or giving a value equal to the principles of the constitution to these norms.

2.1.3.2. Judicial Procedure and Norm Creation: The Evolution of Rule-Making in the Public Law System

As stated, jurisprudence has recently taken on a founding role in establishing norms and regulations in contemporary public law. It is worth mentioning that regularization and creation of norms in legal systems, especially the written legal system, according to the classical principle of separation of powers, was considered only at the discretion of the legislature and there was no violation of the powers of the legislature in this field. With the passage of time and the occurrence of many developments in various fields of social, economic, cultural, and political, the complexity of public affairs and their management is considered one of the most prominent features of contemporary societies. This has led to some adjustments in the way we approach the organization of the structure of government and the administration of public affairs, and the principle of separation of powers has also been exempt from this. Thus, in the context of

this principle, the participation of other powers in the legislature with the legislature is acceptable today, and in many contemporary legal systems, this has been foreseen and prescribed. But this is the beginning of the debate, and in the above cases, the Constitution has supported these matters. But in the field of judicial procedure, the constitutional legislature has no competence in establishing established norms. In this regard, the important point is the change in the sources and methods of creating legal norms and standardization in contemporary legal systems, which has led to the establishment of the authority to create norms for the judicial process. This is emphasized by historical-social positivists such as SAVINI, who consider the origin of the creation of legal rules as the social requirements of the group and emphasize the role of the judicial process in the form of the creation of norms. In the general law of the system, this function is completely similar to private law for the competent judicial institutions in this field, and the judicial procedure has a founding role in matters that are not normative or have ambiguity in the field[8], as exemplified by the United States Supreme Court as a superior legislature (albeit with limited jurisdiction) It acts in the constitutional law of this country[9]. This founding role is realized in three forms: a) creation of procedure, b) declaration of legal contradiction or unconstitutionality of the enacted laws, c) issuance of court rules (decisions of unity and creation of procedure, etc.)[10]. But in written legal systems, due to the lesser role of jurisprudence in legal sources than Kamenla, the role of jurisprudence in creating and establishing norms is a new practice that has become relevant.

In the international legal system, the role of the judicial system, inspired by the statute of the International Court of Justice, is not prominent from the findings of the written legal system and is merely one of the secondary sources for deriving the necessary requirements. But developments in modern international law have highlighted this marginal role of jurisprudence. The evolution and dynamism of international law indicate that law is spoken of by an international judge and that he is on the path of regulation; International criminal law is one of them. A look at the statements and approaches outlined in Sadra's rulings from the International Criminal Courts, in particular the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, and the International Court of Justice, which The citation system and the law empowering itself to compensate for those shortcomings and to implement and enforce rules such as the protection of human nature, the compensation of victims of human rights and humanitarian law violations, and the face of corporal punishment. They have turned to the old procedures.

8. BARNETT, Hilaire. 2009: *Understanding public law*. Routledge. ELLIOTT, Mark and VARUHAS, Jason. 2017: *Administrative law: text and materials*. Oxford University Press. KOZEL, Randy J. 2012: *Settled Versus Right: Constitutional Method and the Path of Precedent*. Tex. L. Rev., vol. 91, 1843.

9. LEITER, Brian. 2014: «Constitutional Law, Moral Judgment, and the Supreme Court as Super-Legislature». *Hastings LJ*, 2014, 66: 1601.

10. PIZZORUSSO, Alessandro; CAPOTORTI, Francesco and STRÖMHOLM, Stig. 1988: *Law in the making: a comparative survey*. Springer-verlag.

2.1.3.2.1. Examples

The actions of the French Constitutional Council in creating some new norms by establishing certain rights and freedoms of individuals are a clear example in this regard. It should be noted that the Council, which is the competent authority for the conformity of ordinary and organizing laws with the basic norms of the French legal system, does not strictly limit the basic norms to which these laws must conform, but to Article 89 of the Constitution. The 1958 and 1946 constitutions and the Declaration of the Rights of Man and of the Citizen of 1789, as well as constitutional values such as «the maintenance of public order» and the «rights and freedoms of others», are among the basic reference norms[11]. In a vote on December 27, 1973, the Council ratified the Declaration of the Rights of Man and of the Citizen of 1789, recognizing the principles contained therein as having constitutional value. This is due to the reference and the basic norm of recognizing the preamble of the 1958 Constitution. Paragraph 1 of this preamble states: «The French people declare their allegiance to human rights and to the principles of national sovereignty, as set forth in the Declaration of the Rights of Man and of the Citizen of 1789 and endorsed by the Preamble to the 1946 Constitution». «The French people also express their dependence on the rights and obligations set out in the 2004 Declaration of the Environment». By accepting this preamble and the principles enshrined in it as the basic norms to which ordinary and organizing laws must conform, with reference to the Declaration of the Rights of Man and the Citizen of 1789 and the preamble to the 1946 Constitution, there are two documents. The number of basic norms is set.

In this regard, we can refer to the Council of Government of France and the role of this institution in completing the rules and legal norms in the legal system of this country. The role of the French Council of State and judges of the French administrative courts in establishing principles such as equality of citizens in public office (gender equality, equality of access to public office, equality of public expenditure, etc.), the right to object to the legality of any action Administrative proceedings before the court, the non-retroactivity of administrative acts, the principle of freedom of trade and industry, the prohibition of dismissal of employees who are imposed on the office in the absence of legal documents, are a clear example of this. For example, in 1982, citing the principle of equality, Article 7 of Law 24 of 1825 on the legal establishment of women's religious councils and associations, whose provisions made religion more strictly religious to men than religious men, made it stricter. Or we can refer to the council's May 27, 1992, decision to repeal an ordinance opposing the fundamental principle recognized by republican law (the principle of the independence of university professors)[12]. The jurisprudence established by this institution in the French legal system and in the field

11. HAMON, Francis and WIENER, Céline. 2001: La justice constitutionnelle: Présentation générale, France, Etats-Unis, Documentation française, N 1/15.

12. FAVOREU, Louis. 1998: *La constitutionnalisation du droit*.

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of administrative law in order to complete the rules and norms is exemplary. In fact, in French law, the source of many rules of administrative law must be sought in the procedures and initiatives of the administrative courts, especially the Council of State.

2.2. *Protective Role: Protection of Rights and Freedoms*

Another important function of the procedure in contemporary public law is the protection of the fundamental rights and freedoms of individuals, which has fundamentally highlighted the procedural nature of contemporary public law in this area. In addition to the task of resolving disputes and lawsuits that have been assigned to judicial authorities, the protection of the rights and freedoms of citizens is one of the most important duties and powers of these institutions. An example of this can be seen in Article 66 of the French Constitution. This principle states that the judiciary is the «guardian of the freedom of the individual».

2.2.1. Legal Proceedings in Spanish Courts

In Spain, the court performs its duties through a variety of procedures:

- Unconstitutional appeal (Recurso de inconstitucionalidad). This is an appeal that is unconstitutional to acts and laws that have the force of action and is governed by Article 161.1.a and Title II, Chapter II, Articles 31-34 of the LOTC.
- The issue is unconstitutional (Cuestión de inconstitucionalidad). If a judicial authority, in the case of a case, finds that the provisions enforced by law may be unconstitutional, it may refer the matter to the Constitutional Court. This is regulated by Article 163 SC and Title II, Chapter III, Articles 35-37 of the LOTC.

Both procedures are considered unconstitutional (Title II, Articles 27 to 40 of the LOTC).

Individual appeal for protection (Recurso de Amparo) is designed to protect citizens against violations of the fundamental rights and freedoms protected in Part I, Chapter II, Articles 15 to 29 SC, which is carried out by any public authority. It is regulated by Articles 53.2 and 161.1.b CE and by Title III, Articles 41 to 58 of the LOTC.

The persons or persons who have the right to submit to the mentioned formalities are mentioned in. Article 162 BC Proceedings against unconstitutional matters are the sole responsibility of the judiciary.

If an international treaty contains conditions that are unconstitutional, its conclusion requires prior amendment of the constitution. As stated in Article 95 of the Constitution and Article 78 of the LOTC, the Constitutional Court may be questioned by the State or Parliament as to the constitutionality of the provisions of such a treaty.

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The Constitutional Court also has the right to hear disputes between the various organs of the country (Article 59.3 of the LOTC and Title IV of Chapter III, Articles 73 to 75 of the LOTC).

- Judicial Protection of rights and Freedoms in public international law

In the present article, the prominence of the judicial procedure in protecting the rights and freedoms of individuals in the procedure of some international judicial authorities in the field of international public law will be examined.

2.2.2. European Court of Human Rights

The European Convention on Human Rights, adopted in 1950, is the founding document of the European Court of Human Rights. Under the convention, for the first time, a judicial body was established to implement and control the International Covenant on Human Rights. An important and fundamental point in the context of this institution is the right of individuals and non-governmental organizations to complain in addition to the states, member states in accordance with Article 34 of this Convention, which is a unique step in promoting the international value of individuals and the reduction of the absolute sovereignty of states with regard to the sovereignty of states in the international arena are considered. Although it bears the European title, its member states have transcended Europe and seen a quadruple increase in membership since its inception. The practice and performance of this institution has also made it a prominent model among institutions that protect the rights and freedoms of citizens. In its rulings, the Court has repeatedly emphasized the existence of parties and their role in the realization of democracy, and the existence of parties implies the existence of pluralism in a democratic state. Prohibition of governments expelling asylum seekers at risk of torture and inhuman or degrading treatment or punishment, Violation of the right to privacy by intercepting telephone conversations of suspected drug traffickers and discrediting findings: And the commitment to pay compensation in the event of the arbitrary detention of suspects of international piracy are other findings of the Court in support of individual rights and freedoms.

2.2.3. International Court of Justice

The International Court of Justice is the main judicial body of the United Nations. The plaintiffs in this court are only countries. This first brings to mind the ineffective role of individuals and individual rights and freedoms. However, the procedure and performance of this court show the opposite, and this issue also shows the prominence of this institution in protecting and protecting human rights and freedoms and limiting the power of governments.

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This institution, with its approach to human rights issues and the protection and protection of fundamental human rights throughout its life, has played an important role in highlighting the position of the individual and his rights and freedoms in public law and the legal system in general. And has not played a major role. Although the jurisdiction of individuals in this court is inconceivable, its humane and rights-oriented approach to issues such as humanitarian law, the right to self-determination and human rights is evident through its votes. In this regard, we can refer to the Barcelona transaction as a declaration of international support for the fundamental rights of the human person; Case of hostage-taking of US diplomatic personnel in Tehran as a sentence of deprivation of liberty and unlawful detention; Diallo case as a conviction of arbitrary deportation and detention; He cited the retaining wall case as imposing illegal restrictions on Palestinian freedoms.

First, the Barcelona Transaction case: In this judgment, the Court makes a fundamental distinction between the obligations of States to the international community as a whole and the obligations of States to one another within the framework of political protection of the obligations of the first category to all States. Given the importance of these rights, all governments can have a legal interest in safeguarding them. Such commitments are called universal commitments. For example, these obligations in contemporary international law derived from the principle of the prohibition of rape, and the prohibition of mass murder, as well as the principles and rules relating to the protection of fundamental human rights, including protection against slavery and racial discrimination. Some related protection rights have been included in the body of general international law (the provision on the right to the conditionality of the Convention on the Prohibition of the Punishment of Mass Destruction) and others have been globalized or quasi-globalized by international instruments[13].

Second, the case of the US diplomatic and consular staff in Tehran: In this ruling, the Court, while emphasizing the violation of international rules governing diplomatic and consular rights, believes that depriving individuals of their liberties and placing them in harsh and rigorous conditions. The law itself is contrary to the principles of the Charter of the United Nations and the fundamental principles enshrined in the Universal Declaration of Human Rights. In addition, the host government has undertaken to take all appropriate measures to safeguard the dignity and professional and personal dignity of diplomatic agents and to prevent harm to persons, their dignity, and liberty[14].

Third, the Diallo case: In order to comply with Article 13 of the International Covenant on Civil and Political Rights and Article 12 4 4 of the African Charter on Human

13. GRISEL, Etienne. 1970: «The lateral boundaries of the continental shelf and the judgment of the International Court of Justice in the North Sea Continental Shelf Cases». *American Journal of International Law*, 1970, 64(3): 562-593.

14. BASSIOUNI, M. Cherif and DERBY, Daniel H. 1980: «Final Report on the Establishment of an International Criminal Court for the Implementation of the Apartheid Convention and Other Relevant International Instruments». *Hofstra L. Rev.*, 1980, 9: 523.

and Peoples' Rights, the legal expulsion of an alien from the State party on which these instruments are based must apply domestic law and must comply with other requirements of the African Charter and must not be arbitrary. The Court notes that this interpretation has been fully endorsed by the Committee on Human Rights established by the Covenant, as well as by the case law of the African Commission on Human Rights and Peoples. The Court considers that the deportation order of 31 October 1995 does not comply with Congolese law for two reasons: 1. In this case, no consultation has been held with the National Immigration Board. Whereas, pursuant to Article 16 of the Parliamentary Decree of 12 September 1983 on the control of immigration, the opinion of the said Board is required; 2. There was no reason to dismiss Diallo, which is necessary under Article 15 of the same decree. Accordingly, Diallo's expulsion did not comply with Congolese domestic law and violated Article 13 of the Covenant and Article 12 4 4 of the African Charter. In addition, the Court considers that Guinea, as a State party, has a claim in this regard that the right set forth in Article 13 of the Covenant on Dialogue has not been complied with. According to this article, an alien who is the subject of an expulsion action has the right to be informed of the reasons for the expulsion, as well as to have his case reviewed by a competent authority. Congo has also failed to provide convincing reasons for its national security in the face of Diallo's expulsion, on the basis of which the waiver of the rights set forth in Article 13 of the Covenant is justified.

Fourth, the issue of the effects of the construction of the retaining wall: The Court, in evaluating the construction of the retaining wall from the perspective of international human rights and its effects and consequences for the human rights of the Palestinian people, refers to some articles of the Covenant. Including the construction of a wall that restricts many restrictions on the freedom of movement of Palestinians, their freedom of access to holy sites, the Palestinian people's access to health services, shelter and shelter, the provision of water, education, shelter, shelter, housing and housing.

- Judicial protection of rights and freedoms in domestic public law

The performance of the Supreme Court of the United States and the Court of Administrative Justice of Spain will be discussed.

2.2.3.1. The Supreme Court of the United States

In this regard, we can refer to the Supreme Court of the United States of America, which, according to the decentralized judiciary, plays the role of the main judge in the legal system of the United States. This role is especially important because jurisprudence in the legal system of Anglo-Saxon countries is much more important than that of the legal states. The role of this institution and the resulting judicial practice in the field of constitutional law, especially after the Second World War, has been significant and prominent. This court has sometimes maintained the current order with its

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interpretations and sometimes has acted contrary to the current situation with different interpretations, which have also had important political effects.

The Court's common practice in upholding and defending rights such as civil liberties in the areas of opinion and expression, criminal guarantees, the right to life and abortion, and support for equality by law in the areas of racial equality, condemnation of racial discrimination, equality, and equality It has had a brilliant and effective performance. In the area of freedom of expression, for example, the Court considers this freedom to be almost unrestricted, including cases such as the right to insult public officials and the publication of government documents. Or the area of privacy which this court includes in three parts: a) the right of a person to be free in personal affairs from government oversight and interference, b) the right of a person not to disclose private matters, and c) independence in deciding on important matters such as marriage; Sex, birth, contraception, abortion, family relationships, child-rearing, and education are known to be the fourth and fourteenth constitutions of the Constitution under the First Amendments[15]. In the Texas case against Johnson, the court also ruled that the government was not allowed to deem and prohibit any kind of speech that was detrimental to peace[16]. and further in the case of Virginia v. Belek. States that the First Amendment to the Constitution merely authorizes the government to prevent real threats of violence and that the real threat to freedom of expression includes statements in which the speaker intends to make serious statements aimed at the perpetrators of violent acts or violence against individuals. Has a special[17]. Or, it considers the freedom of association, although not specified in the constitution, to be a right inherent in the value of the constitution, which is implicitly enshrined in the First Amendment of the Constitution, and the state only in cases such as national security and the promotion of social equality at all. Has a strong justification, it is allowed to limit this right[18]. Thus, the institution plays an important role in the constitution of the United States of America, and in particular in the protection of civil rights and freedoms.

2.2.3.2. Court of Administrative Justice of Spain

The Organic Law on the Judiciary defines the Office of the Judiciary (Oficina Judicial) as an administrative organization that acts as a supporter of the judicial work of judges and courts.

15. DIMITRAKOPOULOS, Ioannis G. 2007: *Individual Rights and Liberties Under the US Constitution: The Case Law of the US Supreme Court*. BRILL.

16. DIMITRAKOPOULOS, Ioannis G. 2007: *Individual Rights and Liberties Under the US Constitution: The Case Law of the US Supreme Court*. BRILL.

17. DIMITRAKOPOULOS, Ioannis G. 2007: *Individual Rights and Liberties Under the US Constitution: The Case Law of the US Supreme Court*. BRILL.

18. STEPHENS JR, Otis H. *et al*. 2011: *American Constitutional Law: Civil Rights and Liberties, volume II*. Cengage Learning.

The plan is designed to improve the efficiency, effectiveness and transparency of judicial proceedings, simplify case resolution, and encourage cooperation and coordination between different departments. Therefore, the establishment of this office is a response to the commitment to guarantee quality public services that are close to the people, in accordance with the values of the Constitution and in accordance with the real needs of the citizens.

It is a new organizational model that introduces modern management techniques based on a combination of different administrative units: units that provide direct support for judicial procedures similar to the old courts (juzgados), which assist the judge in the performance of his or her judicial functions and services A common procedure called the Registryos (secretarios judiciales), which performs all non-judicial functions such as receiving documents, handling summonses, enforcing decisions, non-judicial proceedings, accepting petitions for trials, notifying the parties, and resolving problems.

There are three common types of procedural services:

- Shared public services.
- Shared file management service.
- Joint execution service.

The new organizational model was launched in November 2010 in Burgos and Murcia. In February 2011, the courthouse was established in Cáceres and Ciudad Real, and in June 2011 in Leon, Cuenca and Merida. It will also be established in 2011 in Ceuta and Melilla. 2013. This model coexists with the former model of courts (juzgados and tribunals) found elsewhere in Spain.

This can be done only after the end of the trial and within the time limit for issuing the appropriate verdict or judicial decision. The request from the Constitutional Court must specify:

The law in question and the principle of the constitution that has been violated.

With supporting evidence, the extent of the relevant judgment depends on the validity of the decision.

In cases where the constitution of a law is challenged, the judicial procedure is suspended until the decision of the Constitutional Court.

3. CONCLUSION

Judicial practice has not always been limited to the usual orientation of the courts on a matter, but in some cases has gone beyond the usual texts and rules. Of course, the place of jurisprudence in written law has been quite different. This source has a prominent place in Kamenla and is considered as a document of the votes cast. Judicial practice has also played a prominent role in public law, and it is written in the law of the countries that have witnessed the greatest prominence of judicial procedure in

the legal system. Of course, in the Commonwealth countries, the role of the judiciary and the competent authorities in this regard in protecting the rights and freedoms of individuals is significantly prominent.

Judicial procedure in contemporary public law has become one of the main actors in this field with the change in the rules and the process of creating legal norms as a result of social, economic, political, and cultural changes. This is especially evident in constitutional law, and basic judges are one of the most influential institutions at the level of the legal system and determine its direction. In supplementing the norms, which are under the establishment and creation of norms, jurisprudence in public law, especially in written legal systems, has taken on more functions, especially in the third function, namely the protection of rights and freedoms.

Spain, as one of the richest countries in terms of culture and historical background, has special cultural conditions although the legal and judicial system of this country has written and predetermined laws and principles, but due to the rapid expansion of societies and leading issues in The field of technology and transnationalism has led to an increase in the use of legal procedures in court rulings influenced by the culture of this country.

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