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# State Health-Medical Liability: Reflections from the Philosophy of Law and Contemporary Justice

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**ABSTRACT:** In Colombia, the healthcare system was implemented through Law 100 of 1993 and its complementary regulations, giving rise to the General System of Social Security in Health (SGSSS) and the Comprehensive Social Security System (SSSI). These systems are structured around four fundamental thematic axes: (i) public health, (ii) patients' rights, risk management, and ethical and institutional responsibilities, (iii) system financing, and (iv) health technologies. Based on this normative and functional structure, the need arises to strengthen legality and policy in the field of healthcare. Within this framework, the proposal is made to implement an Autonomous Medical-Sanitary Liability Regime and to establish a specialized jurisdiction for the judicial review of medical acts in Colombia, grounded in distributive justice and the State's duty of care. This initiative seeks to respond to the particularities of the healthcare system, ensuring an appropriate legal framework for the resolution of conflicts in the healthcare domain.

The philosophical-legal, constitutional, and conventional analysis has consolidated the recognition of health as a constitutionally protected good, a fundamental right, and a constitutional social right, shaping a model based on Structural Pluralism. In this context, affiliation with and contribution to the healthcare system not only constitute a legal obligation but also materialize the citizen's relationship with the healthcare structure. Methodologically, this study adopts a qualitative approach using a critical hermeneutic method, which enables the interpretation and analysis of the regulatory and doctrinal framework concerning medical liability. Additionally, the technique of expert interviews is employed, allowing for a deeper understanding of the legal and operational issues within Colombia's healthcare system. Based on this analysis, the feasibility and necessity of establishing an autonomous regime of medical-sanitary liability is substantiated, complemented by a specialized jurisdiction that ensures efficient justice administration aligned with the specificities of the health sector.

**Keywords:** Medical act, Healthcare system, Constitutional social rights, Specialized jurisdiction.

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## 1. Introduction

This paper analyses, from the philosophical-legal, constitutional, conventional and legal perspectives, the possibility of legally addressing health through an Autonomous Medical Health Responsibility Regime. Consequently, it proposes the creation of a Special Jurisdiction for the judicialisation of medical acts in Colombia, considering that the health system in the country is structured exclusively under the General System of Social Security in Health (SGSSS) and the Integral Social Security System (SSSI).

One of the distinctive features of health in Colombia is its reinforced legal and political connotation, which implies that, due to its importance and definition, health must be understood as a legal object with special protection. From this perspective, it is examined whether constitutional jurisprudence has correctly dimensioned the real scope of the SGSSS and the SSSI, and whether this jurisprudence, together with the doctrine, allows health to be understood as a system with an autonomous liability regime, derived from its own reinforced nature.

The analysis focuses on the doctor-patient, patient-institution and patient-artificial intelligence (AI) relationship, understanding that these interactions produce the medical act and shape the scope of public health policies. All of this takes place within the framework of the health system, already legally and politically created. Initially, the need to create a Special Jurisdiction for the judicialisation of the medical act is evident, regardless of the origin of the damage (civil, public or disciplinary). The health system itself contains the legal and political regulations necessary to resolve cases of medical liability, provided that it is recognised that the doctor-patient, patient-institution and patient-IA relationship constitutes the central axis of Medical Health Law (DMS) and its Medical Health Liability Regime (RMS).

From a philosophical-constitutional and conventional approach, health is recognised as a constitutionally protected good, a fundamental right and an eminently social right. Under this premise, the proposal for a Special Jurisdiction in DMS and RMS responds to technical and procedural reasons, derived from the complexity of the health system and its specialised regulations. Legality and reinforced health policy are key criteria for consolidating health as a fundamental right and justifying the need for a specific jurisdiction for the resolution of conflicts in the area of SMRs.

This proposal is based on the medical relationship as the main source of obligations within the DMS and its SMR. Initially, the question arises as to whether health presents a normative indeterminacy, unless it is analysed from the Colombian health system. The existence of a specific regulatory structure for the health sector justifies the creation of a forced regulatory articulation, which, in many cases, generates conflicts that must be resolved within the health system itself. In this sense, techniques typical of constitutional jurisprudence could be applied, such as weighting and the treatment of normative indeterminacy, thus guaranteeing a coherent approach with the current health model.

Since its implementation in 1993, the philosophy of the Colombian health system has evolved through constitutional jurisprudence, which has highlighted the need for a Special Jurisdiction on SMR, regardless of the origin of the harm. Health, as a complex and multidimensional right, requires a specific normative treatment that cannot depend exclusively on the traditional criteria of private, public or disciplinary law. Constitutional jurisprudence has recognised the need for a Medical Law with normative autonomy, which reinforces the viability of the creation of a specialised jurisdiction in matters of SMR.

Health in Colombia is structured around two key paradigms: politics and reinforced legality. On this basis, it is essential to dimension health in terms of a system (SGSSS and SSSI) and establish a referential framework based on the thematic axes of health: public health, patient rights, risk management and ethical and institutional responsibilities, financing of the system and health technologies. Within this context, the State plays a central role, as health is a public service under its responsibility. Therefore, the creation of a Special Jurisdiction on AMR would guarantee an adequate technical and scientific approach to the judicialisation of the medical act.

The central axis of this proposal is the human being, as the basis for the philosophical reflection of the RMS. In this sense, the RMS is legally and politically articulated within the Colombian health system, allowing for the structuring of a Special Jurisdiction in RMS. From a philosophical perspective, for example, Marcus Aurelius in Meditations highlights the importance of the human being as a social being within the polis. Following this reasoning, health should be understood as an essential element of human well-being, which justifies the existence of a specialised legal framework for its protection.

The scope of this proposal, both in legal and political terms, lies in the unification of the DMS and its RMS within the existing health system, integrating private, public and disciplinary law into a single jurisdiction. This jurisdiction would make it possible to categorise the health system and its thematic axes, insurance and the health model adopted in Colombia, guaranteeing a legal treatment consistent with the reality of the sector.

Currently, AMR in Colombia presents divergent approaches in the different jurisdictions (private, public and disciplinary), which generates inconsistencies and legal uncertainty in the quantification and qualification of the damage (González, 2021). However, constitutional jurisprudence has progressively redefined medical liability from the perspective of the health system, establishing it as a constitutionally protected good, a fundamental right and a constitutional social right.

In this context, the proposal for a Special Jurisdiction in RMS responds to the need to unify criteria and provide a regulatory framework appropriate to the reality of the Colombian health system. By integrating the principles of medical law within the SGSSS and the SSSI, the system's capacity to guarantee an efficient and specialised administration of justice in the area of medical and health liability is strengthened.

## 2. Methodology

From the methodological point of view, the study falls within the interpretative paradigm and adopts a qualitative approach, based on a critical hermeneutic method that enables a deep and contextualised interpretation of the normative and doctrinal framework relating to medical-healthcare responsibility (Martínez, 2010). This methodological perspective favours a comprehensive understanding of the legal, ethical and institutional discourses that shape the Colombian health system, highlighting its internal tensions, structural gaps and transformative potential.

As a complement, we use the technique of conversation with experts, selected for their experience and knowledge in key areas of health law, the administration of justice and the management of the health system. The inclusion of these specialised voices significantly enriches the analysis by providing critical perspectives and practical experience of the legal and operational issues facing the sector.

On the basis of this analytical and interpretative exercise, the viability, relevance and urgency of establishing an autonomous regime of medical liability for health, which should be accompanied by a specialised jurisdiction, is supported. This normative and judicial proposal seeks to guarantee a more efficient, technical and coherent administration of justice with the complexities of the health system in Colombia, thus strengthening the state's duty of care and the effective protection of fundamental rights.

## 3. Discussion

## 3.1. Proposal for a special jurisdiction on medical health liability (rms)

The General Social Security Health System (SGSSS) and the Integral Social Security System (SSSI) were created to regulate access to health in Colombia, guaranteeing the protection of this fundamental right. The comprehensiveness of the system is made up of institutions, rules and procedures that seek to guarantee the well-being and quality of life of individuals and communities (Ricoeur, 2000).

### 3.1.1. **Fundamental principles of the health system in Colombia based on the philosophy of law**

The Colombian health system is based on principles such as efficiency, universality, solidarity, comprehensiveness, unity and participation. At the normative and political level, these principles have judicialised the medical act, suggesting the need for an autonomous medical liability regime and, consequently, the creation of a Special Jurisdiction in medical matters (Cortés, 2017).

The SGSSS and the SSSI regulate the essential public health service, establishing conditions for access by the population. In this context, the medical act has been judicialised, considering principles such as equity, quality, sustainability and prevention. This judicialisation reinforces the need for a jurisdictional model specialised in medical liability in healthcare.

### 3.1.2. **The structure of the system and its impact on medical and health liability**

The Colombian health system has various actors, including management, surveillance and control bodies (Ministries of Health and Labour, Superintendence of Health), administrative and financing entities (EPS, sectional and local directorates, ADRES) and service providers (public, mixed and private IPS). Given this framework, medical liability should not be analysed from an isolated civil, public or disciplinary perspective, but from the perspective of the system as a whole.

The financing of the health system in Colombia comes from public resources, administered through ADRES, which implies a differentiated legal dimension. This scheme reinforces the idea that the judicialisation of the medical act must be carried out within the framework of the health system and not from traditional jurisdictions.

The principle of solidarity, materialised in the financing of the system through ADRES, is a key argument for the creation of a Special Jurisdiction in RMS. This principle ensures the sustainability of the system through contributions and contributions from different sectors, which reinforces the need for its own judicial instance to resolve health disputes.

### 3.1.3. **Supervision and control of the health system and the protection of patients' human dignity**

In contemporary societies, the relationship between the state, medicine and justice is a field of urgent philosophical reflection. The Colombian health system has control and surveillance mechanisms, including

the Superintendence of Health and other auditing bodies. The existence of these controls emphasises the complexity of the system and the relevance of a specialised jurisdiction for medical malpractice, insofar as the medical act is already judicialised from its regulation.

The dispersion of medical liability in civil, public and disciplinary jurisdictions generates inconsistencies in the quantification and qualification of damage to health. The creation of a Special Jurisdiction in RMS would allow these cases to be addressed from a comprehensive perspective, guaranteeing real access to justice and prioritising the fundamental right to health (Hernández, 2000).

### 3.1.4. Constitutional casuistry and the rationale for the Special Jurisdiction on AMR

Since 1998, constitutional jurisprudence has established that health is a fundamental right and a constitutionally protected good, reinforcing the need for a specific normative framework for AMR. Medical evidence within the health system should be analysed from the criteria established in the SGSSS and the SSSI, avoiding fragmented interpretations based on other jurisdictions (Vásquez & Barrios, 2018).

## 3.2. Implications of health as a constitutionally protected good, a fundamental right and a constitutional social right

The recognition of health as a constitutionally protected good, a fundamental right and a constitutional social right has profound legal and systemic implications in Colombia. This recognition makes it possible to analyse why Medical Health Responsibility (RMS), whether in its civil, public or disciplinary dimension, lacks the appropriate technical, legal and procedural criteria to address the judicialisation of the medical act within the health system.

### 3.2.1. The Health System in Colombia and its Legal Framework

The health system in Colombia recognises various actors, such as Health Service Providing Institutions (IPS), Health Promoting Entities (EPS), patients and the State. The latter, through the implementation of public policies, plays a crucial role in guaranteeing the right to health. The model adopted in Colombia is Structural Pluralism (P.E.), also known as managed competition, structured around the following thematic axes:

- Philosophical-constitutional axis: guarantees the right to health.

- Public health axis: Establishes strategies for the protection and promotion of health.

- Patient rights, risk management and responsibilities.

- Axis of health system financing.

- Axis of health technologies. These axes, normatively supported by Law 100 of 1993 and its complementary norms, make it possible to understand the functioning of the General System of Social Security in Health (SGSSS) and the Integral Social Security System (SSSI) (Londoño, 1997).

### 3.2.2. The Judicialisation of the Medical Act in the Health System

Medical Health Law (DMS) and its Medical Health Liability (RMS) must be analysed from the lex artis and the legal and ethical framework that regulates the sector. In this sense, the judicialisation of the medical act occurs due to the interaction between affiliation and contribution to the system, generating legal relations between doctor-patient, patient-institution and patient-artificial intelligence (AI). Currently, the resolution of health conflicts is distributed among civil, public and disciplinary jurisdictions, in the absence of a Specialised Jurisdiction in DMS and RMS.

Since 2008, constitutional jurisprudence has recognised the structural problems derived from the current health model, which has led to the judicialisation of the medical act and the recognition of health as a right that transcends ordinary legality to be placed in a framework of reinforced legality.

### 3.2.3. Key Elements of Philosophical-Structural Pluralism and its Impact on Judicialisation

The Philosophical-Structural Pluralism model introduces four fundamental concepts:

1. Modulation: the role of the state in ensuring stability in the system by regulating norms and policies.

2. Articulation: Transfer of resources between actors in the system and mechanisms to mitigate financial risk.

3. Service delivery: Joint action by all actors in the system with the human person at the centre.

4. Financing: Mechanisms for the economic sustainability of the system defined in the SGSSS and SSSI (Echeverri, 2003).

Each of these elements generates norms and policies that contribute to the judicialisation of the medical act. However, the medical act should not be dealt with under civil, public or disciplinary jurisdictions, since its nature derives from a medical relationship regulated by specific regulations and policies of the health system.

#### 3.2.4. **Towards a Specialized Jurisdiction for Medical Devices and Medical Devices**

Philosophical and jurisprudential developments have consolidated the interpretation of health as a right with conventional, constitutional, and legal protection. In this context, the creation of a Specialized Jurisdiction for Medical Devices and Medical Devices is necessary to ensure proper application of the right to health within the system; resolve conflicts arising from the judicialization of medical acts with specialized criteria; and prevent health-related disputes from being handled by inappropriate jurisdictions.

Following the theory of David Martínez Zorrilla (2007), in his work Constitutional Conflicts, Weighing, and Normative Indeterminacy, norms emerge from the interpretation of normative provisions. In this sense, constitutional jurisprudence in health has established rules and normative prototypes that reinforce the need for a specialized jurisdiction.

The recognition of health as a constitutionally protected good, a fundamental right, and a constitutional social right justifies the need for an Autonomous Medical Liability Regime. The structure of the Colombian health model, along with its thematic and regulatory axes, has led to the judicialization of medical acts. However, the absence of a specialized jurisdiction has generated conflicts in the application of the law. The creation of a Special Jurisdiction in DMS and RMS is, therefore, an imperative for the adequate resolution of disputes in the health sector in Colombia.

### 3.3. Implications of health as a constitutionally protected good and the need for special jurisdiction in dms and rms

The recognition of health as a constitutionally protected good, a fundamental right, and a constitutional social right has profound implications for the way medical acts are judicialized within the Colombian health system. Currently, Medical Liability (MRL), whether in the civil, public, or disciplinary spheres, lacks adequate technical, legal, or procedural criteria to assess this judicialization within the system.

The Colombian health system recognizes key actors, such as IPSs, EPSs, patients, and the State, within a framework of Philosophical-Structural Pluralism (P.E.) or managed competition (Castaño, 2023). This model is structured around fundamental thematic axes: The constitutional axis: the right to health (Judgment T-760, 2008); the axis related to public health; that linked to patient rights, risk management, and moral and legal responsibilities; the axis inherent to the financing of the health system; and the axis specific to health technologies. These axes determine the functioning of the General Social Security System in Health (SGSSS) and the Comprehensive Social Security System (SSSI), which reinforces the need for specific regulations regarding DMS and RMS.

#### 3.3.1. **The DMS and its RMS within a framework of reinforced legality**

The medical act must be analyzed from its lex artis, but also based on the constitutionality, conventionality, and legality inherent to the SGSSS and the SSSI. Affiliation and contributions to the health system generate a series of key legal relationships: Doctor-patient; patient-private or public institution (Gutiérrez & Vásquez, 2013); patient-artificial intelligence (AI). The judicialization of medical acts cannot be effectively addressed through civil, public, or disciplinary jurisdictions, as these do not consider the structural complexity of the health system. Consequently, a specialized jurisdiction for DMS and RMS is required to respond to this reality.

#### 3.3.2. **The Impact of Philosophical-Structural Pluralism on the Judicialization of Medical Acts**

The Philosophical-Structural Pluralism model relates four fundamental aspects of the health system:

• Modulation: State function that harmonizes service provision and reduces uncertainty, guaranteeing principles such as universality, solidarity, and non-regression.

• Articulation: Transfer of resources between the population, service providers, and financial agencies, dispersing risk to reduce financial uncertainty.

• Service Provision: Focused on human care as the central axis of the system, which reinforces its legality and reinforced policy. • Financing: Determined by the sources established in the SGSSS and the SSSI.

Each of these aspects judicializes the medical act as a result of regulations and public health policies. This implies that the medical act cannot be analyzed under commercial, civil, or disciplinary logic, but rather as a medical relationship within a regulated system.

### 3.3.3. The Construction of Reinforced Legality in Health, Based on the Philosophy of Law

The consolidation of the concept of reinforced legality in health stems from Colombian constitutional case law, which has recognized health as a fundamental right and a constitutional social right. This recognition is based on:

• The prevalence of international human rights treaties and conventions in the domestic legal system.

• Recognition of health as a fundamental right in Statutory Law 1751 of 2015.

• Regulation of the SGSSS and SSSI through Law 100 of 1993 and its complementary regulations.

Constitutional case law, by defining prototypes and rules in health, acts as a normative element that reinforces the need for a specialized jurisdiction for DMS and RMS. The recognition of health as a constitutionally protected good implies that its regulation cannot depend exclusively on general jurisdictions. The judicialization of medical acts responds to the modulation, articulation, care, and financing of the system, which demands a specialized legal response. Therefore, the creation of a Special Jurisdiction in DMS and RMS is proposed, allowing medical acts to be addressed within the structural framework of the Colombian health system. This would guarantee an interpretation consistent with the reinforced legality in health and with the reality of the aforementioned Structural Pluralism model.

Constitutional case law has clearly established health as a constitutionally protected good, a fundamental right, and a constitutional social right. The judicialization of medical acts should not be interpreted from the perspective of civil, public, or disciplinary jurisdiction, but rather within the Colombian health system. Given that health is regulated by regulations, policies, and principles of reinforced legality, the implementation of an Autonomous Medical Liability Regime and the creation of a Special Jurisdiction in DMS and RMS are necessary. This would allow for an appropriate approach to conflicts arising from the medical relationship and ensure effective application of the principles governing medical practice in the Colombian health system.

## 3.4. The system of medical liability in the health care system: ontology before epistemology in this system

At first glance, one might think that the current regulations in Colombia governing the healthcare system would, in principle, be sufficient to unify the various jurisdictions (civil, public, and disciplinary)[1] regarding medical liability. However, the configuration of the healthcare system and the relationships that arise within it—such as the interaction between doctor and patient, patient and institution, and patient and artificial intelligence—generate a specific judicialization of medical acts. To address this complexity, it has been necessary to develop doctrinal, philosophical, and constitutional concepts such as casuistry, which allow for analyzing medical liability beyond civil, public, or disciplinary law. This approach seeks to understand the origin of harm within the healthcare system itself, prioritizing the impact on the individual.

### 3.4.1. **Constitutional Case Law and Its Impact on the Health System**

[1] From the perspective of existing health regulations, a very interesting debate arises regarding what is known as a Code and a Statute. Constitutional case law has clarified that the concepts of Code and Statute are not synonymous. The Code is a coherent, harmonious set of provisions on a particular subject, just as our Codes (Civil, Commercial, Labor, Disciplinary, among others) are. The Statute, on the other hand, governs or regulates an activity or specialty, which can be integrated by distinct regulations or laws, which are not contained in a single text, as the Code can be. According to Case C-558 of 1992, the Statute is broader than the Code. Hence, from the perspective of health understood as a system, Law 100 of 1993 and other complementary regulations clearly constitute more of a Statute than a Code. The numerous health regulations in Colombia, and from the perspective of the chosen health model in Colombia (P.E.), modulation as an element, expanded the entire regulatory framework for procedures and responsibilities that comprise the judicialization of medical acts. This implies that RMS must be addressed exclusively within the existing Health Statute in Colombia, even if the legislator has not expressly stated so. However, the initial idea for creating an autonomous jurisdiction in DMS may initially begin with issuing an organic statute for the SGSSS and the SSSI, creating a continuous numbering system to systematize, harmonize, and integrate the current health regulations into a single legal framework.

Since 1998, constitutional rulings have addressed multiple issues within the health system, responding to demands that initially ignored the patient's fundamental right to receive medical care. Constitutional jurisprudence has played a key role in protecting these rights, issuing orders to health authorities to ensure compliance and establishing monitoring mechanisms that remain in force to date (2025).

Unlike civil, public, and disciplinary jurisdictions, these mechanisms do not focus solely on sanctions or reparations, but rather seek to ensure the effective provision of health services. This has led to the consolidation of an autonomous Medical Responsibility in Health (MRH) regime in Colombia, which responds to the specificities of the health system. In the analysis of medical liability, a distinction has been made between "factual and normative spheres," comparing the regulation of civil, public, and disciplinary law with the rules of the health system, structured around the General Social Security System (SGSSS) and the Comprehensive Social Security System (SSSI).

Given that affiliation and contributions to the health system constitute the source of harm in many cases, the need to establish a Special Jurisdiction for medical matters is evident, addressing these conflicts with criteria appropriate to the nature of the health system.

3.4.2. **Right to Health and Barriers to Access to Medical Care**

The philosophy of the right to health implies the guarantee of timely, high-quality, and effective access to medical services. The system must ensure the provision of services without administrative or economic obstacles, prioritizing the patient's health over any other consideration. In this sense, compliance with medical orders cannot depend on barriers imposed by the entities providing the service. However, current judicial regulations (civil, public, and disciplinary) do not integrate this principle into the Medical Liability in Health regime.

### 3.4.3. Differences between the Health System and Other Branches of Law

Unlike civil, public, and disciplinary law, where liability is based on other legal relationships, the health system places the human person at the center of its philosophical structure. This justifies the need for a Special Jurisdiction in Medical-Health Law (DMS) and Medical Liability in Health (RMS), which takes into account the specificity of the obligations incurred in the doctor-patient, patient-institution, and patient-artificial intelligence relationships.

For example, financial obligations arising from health care should not become a barrier to access to medical services. The current regulation of the system allows these problems to be resolved within the health system itself, without the need to transfer them to external jurisdictions. The judicialization of medical acts is already underway through regulations, policies, and sub-rules developed in constitutional jurisprudence. This reinforces the need for a specialized jurisdiction for medical services, capable of resolving conflicts arising within the health system.

Legal and Political Mechanisms to Guarantee the Continuity of Medical and Healthcare Treatment

The healthcare system has developed legal and political strategies to prevent the interruption of medical treatment due to economic or administrative barriers. Constitutional jurisprudence has addressed situations such as the denial of care, lack of access to diagnostic tests, and lack of coverage for catastrophic or high-cost illnesses, ordering the elimination of these obstacles. In this context, health damage is no longer understood from external jurisdictions and is incorporated into a framework where the healthcare system itself is responsible for its generation and resolution, consolidating the need for a specialized jurisdiction.

The healthcare model in Colombia, based on Philosophical-Structural Pluralism (PSP), establishes essential functions such as modulation, coordination, care, and financing of the system. Within this framework, the judicialization of medical acts is already implicit in the very functioning of the healthcare system (Castaño, 2005). The comprehensiveness of the system requires that medical care be provided at all stages of treatment. While administrative burdens exist, these cannot be an obstacle to the provision of services; they must be resolved subsequently without affecting the patient. This approach has allowed for the

construction of a new RMS regime in Colombia, based on the medical relationship within the health system and not on other legal structures.

### 3.4.4. Health, Constitutionality, and the Need for a Specialized Jurisdiction

The right to health is constitutionally protected and structured within the framework of constitutionality. Its guarantee stems from the ontology of the human being, which implies the obligation to respect, protect, and guarantee it. Current jurisdictions are not designed to address RMS from the perspective of the health system created in 1993. This has created gaps that affect patient care and do not prioritize the human person. In this sense, the creation of a Special Jurisdiction in DMS and RMS is presented as a viable alternative, with qualified personnel, adequate logistics, and technical-scientific and procedural tools that allow for the development of the fundamental principles of the health system.

If we start from the centrality of the human person and the influence of medicine on their body and mind, the most appropriate regulations are those that arise from the health system itself. The relationship between the individual and medicine involves an interaction between ontology, deontology, and epistemology, always based on the well-being of the patient.

Constitutional jurisprudence has confirmed that the health system[2], is nourished by the philosophy of the block of constitutionality, under the principle that all human rights are universal, indivisible and interdependent, in accordance with the Vienna Declaration and Program of Action of 1993. To conclude this proposal for an Autonomous Medical Health Responsibility Regime in Colombia and justify the creation of a Special Jurisdiction in DMS and RMS, it is essential to analyze health from the perspective of the principles that support it, what we call health principles.

## 3.5. Principialist philosophy in health and its construction within the system

Principlist philosophy in the DMS and its RMS involves the identification and development of specific principles for health, which emerge from constitutional, conventional, and legal frameworks. However, when the health system does not expressly establish certain principles, it is necessary to resort to a metalanguage that allows for the construction or reconstruction of principles within the SGSSS and the SSSI.

In this sense, constitutional case law has played a key role in developing a specific language of health principles, adapting it to the specific cases that arise within the system. This implies that principles exclusive to the health system can emerge without needing to be derived from other branches of law, since its foundation is the human person as its central axis.

### 3.5.1. **The Construction of Specific Principles in the Health System**

The Colombian health system has developed its own principles that connote key terms such as care, access, quality, timeliness, effectiveness, provision, barriers, burdens, comprehensiveness, information, and coverage. The application of these concepts has allowed for the construction or reconstruction of principles oriented toward the effectiveness of the system for the benefit of the human person. A relevant example is the pro homine principle, which is applied more effectively within the health system than in other legal spheres, as it is based on the premise that health is a fundamental right. This principle takes on a deeper meaning in health, in contrast to interpretations that consider it only as a constitutionally protected good or a social right (De Clément, 2015).

[2] On this topic, various sources can be consulted that address the conceptualization of health from different perspectives: Sara Herrero Jaén (2016), in Formalization of the concept of health through logic: impact of formal language in the health sciences, analyzes the impact of formal language on the definition of health. José M. Bertolote (2008), in Roots of the concept of mental health, explores the historical and conceptual foundations of mental health. Vicente Navarro (1998), in Current concept of public health, examines the evolution and current state of the concept of public health. Valentín Gavidia and Martha Talavera (2012), in The construction of the concept of health, discuss the evolution and factors that have influenced the definition of health. Gustavo Alcántara Moreno (2008), in The definition of health of the World Health Organization and interdisciplinarity, reflects on the WHO definition and its relationship with an interdisciplinary approach. These references offer a broad perspective on the evolution and formalization of the concept of health in different areas.

### 3.5.2. **The Relationship between Human Dignity and Responsibility in the DMS**

From a perspective centered on the philosophy of the human person and their dignity (Amandi, 2006), health principialism reinforces the notion of responsibility in the DMS. Statutory Health Law 1751 of 2015 establishes the imperative to interpret health regulations in light of the most favorable standard, which refers us to the Aristotelian conception of phronesis (practical wisdom or prudence). In this context, a Special Jurisdiction in Medical Matters would allow for the more efficient resolution of health cases, since judges specialized in DMS and RMS would be better equipped to apply judicial prudence in the interpretation of regulations and evidence derived from the judicialization of medical acts.

The creation The establishment of a Special Jurisdiction in DMS and RMS would avoid the technical and argumentative deficiencies of the judges who currently handle these cases without specialized training. Furthermore, it would allow for the proper categorization of evidence arising from the judicialization of medical acts, incorporating technical-scientific and procedural aspects specific to the health system. Just as there are specialized jurisdictions in civil, commercial, and labor law, the health system must have its own specialized jurisdiction to address conflicts arising from the medical relationship.

### 3.5.3. The principle of solidarity as the cornerstone of the health system

One of the most effective principles in the argumentation of the SGSSS and the SSSI is the principle of solidarity, which recognizes that health is a common good and that its sustainability must be based on the solidarity contributions of all citizens. This principle is reflected in the solidarity-based financing of the contributory regime; the inclusion of beneficiaries and the linked population; collective public health coverage; free care for children under one year of age; and the guarantee of availability, access, and quality of services. From this perspective, solidarity justifies the creation of a Special Jurisdiction in DMS and RMS, ensuring effective resolution of conflicts arising from the health system and strengthening the protection of patients' rights. In short, it is argued that the best way to consolidate an Autonomous Medical and Health Liability Regime in Colombia is through health principles. The constitutional, conventional, and legal structure based on principles allows for a more effective development of categories and relationships within the health system.

From the philosophy of law, the human person, human dignity, and health principles configure the health system as an autonomous system in terms of liability, within a framework of legality and health policy that already recognizes the judicialization of medical acts (Gough, 2007) in Colombia.

## 3.6. The creation of a jurisdiction that reflects the autonomy of the health system in matters of medical and health liability

Currently, judges resolve health cases by applying criteria from civil, administrative, or disciplinary law, without considering the systemic nature of health. This fragmentation generates divergent decisions and a lack of legal certainty for patients and service providers. Proposal for the Creation of a Special Jurisdiction in the DMS and its RMS in Colombia.

In Colombia, the handling of health matters is currently in the hands of two main jurisdictions: civil jurisdiction (private law) and administrative litigation jurisdiction (public law). Additionally, Medical Ethics Tribunals address medical liability from an ethical perspective (Aristotle, 2013). However, the creation of Constitutional Jurisdiction has significantly influenced the interpretation of health, highlighting its nature as a fundamental right and its treatment within the General Social Security System (SGSSS) and the Comprehensive Social Security System (SSSI).

This change has highlighted a dissonance between the interpretations of current jurisdictions and the nature of the Colombian health system. While private and public law analyze medical liability based on the contractual or administrative relationship between the parties, the health system configures it within a comprehensive structure that considers affiliation, contributions, and the doctor-patient relationship as part of a whole. Therefore, it is imperative to create a Special Jurisdiction in the DMS and its RMS, which harmonizes judicial criteria and guarantees a unified interpretation of health within the framework of the

SGSSS and the SSSI.

3.6.1. **Final Justifications for the Creation of a Specialized Jurisdiction**

Since 1993, Law 100 established a health model based on Philosophical-Structural Pluralism, which introduces an approach based on modulation, articulation, care, financing, and health insurance. However, current jurisdictions have not fully integrated these elements into their decisions, leading to rulings that fail to recognize liability from a system perspective. Furthermore, constitutional case law since 2008 has demonstrated the complexity of health in Colombia and its interaction with fundamental, conventional, and social rights. The judicialization of medical acts has demonstrated that medical liability must be addressed within the framework of the SGSSS and the SSSI, rather than adjusting to traditional liability models.

Therefore, the creation of a Special Jurisdiction in DMS and RMS would allow for the unification of jurisprudential criteria in health, guarantee legal certainty for health system actors, and facilitate the implementation of the Special Jurisdiction in DMS and RMS. Resolve cases from the perspective of the health system, rather than fragmenting them into private, public, or disciplinary approaches; incorporate the regulations and sub-rules of the SGSSS and SSSI into conflict resolution.

To create this new jurisdiction, we propose amending Article 116 of the Colombian Political Constitution, incorporating the Special Jurisdiction in DMS and its RMS. This should be complemented by a statutory law that develops the substantive and procedural aspects, including the powers of the new jurisdiction, defining its exclusive scope of application in health matters; criteria for conflict resolution, considering the principles of comprehensiveness, universality, and solidarity of the SGSSS; structure and organization, establishing specialized health courts with judges trained in DMS and RMS; and implementation timeline, determining a transitional period for the adaptation of the judicial system.

This reform will require qualified majorities in Congress and a short- and medium-term fiscal framework for its implementation. However, the benefits in terms of regulatory clarity, procedural efficiency, and protection of citizens' rights fully justify its adoption. The proposal for a Special Jurisdiction in the DMS and its RMS arises from the need to align medical liability with the structure of the Colombian health system. Health should not be interpreted exclusively within the framework of private, public, or disciplinary law, but rather within its autonomy and freedom (Habermas, 2002), within the SGSSS and SSSI.

This initiative poses a legislative, political, and economic challenge, but its implementation would ensure that the judicialization of medical acts is addressed with a specialized approach, allowing for coherent judicial decisions tailored to the reality of the Colombian health system. As Terence Irwin rightly points out: "This proposal is provocative rather than conclusive" (Irwin, 1989, p. 5), and therefore remains open to future debate and development.

## 4. Conclusions

The concepts of responsibility, duty of care, justice and reinforced legality must be reviewed in the light of contemporary legal philosophy. In particular, it is urgent that the interpretation of health conflicts be based on an institutional ethic committed to respect for the human person as an end in itself, not as a mere subject of benefits. The normativity of the health system in Colombia has been shaped by the interaction between legislation and policy. Law 100 of 1993 established the General System of Social Security in Health (SGSSS) and the Comprehensive Social Security System (SSSI), while constitutional and conventional jurisprudence has consolidated health as a constitutionally protected good, a fundamental right and a social right. This recognition has meant that health cases must be addressed from an approach based on constitutionality, conventionality and legality, which demonstrates the need for a Special Jurisdiction in DMS and RMS.

The health model adopted in Colombia, Philosophical-Structural Pluralism, organises the system around four fundamental axes: modulation, articulation, service delivery and financing. It is also based on public policies and key thematic axes, such as public health, patients' rights, risk management, financing of the system and the development of health technologies. This complex structure reinforces the need for a specialised jurisdiction to interpret and resolve health cases within the framework of the system itself. The judge in the health field cannot be a blind applicator of rules, but a prudent actor who, in the Aristotelian style, reasons from phronesis to resolve complex conflicts. Health, because of its ontological and existential

dimension, requires context-sensitive decisions, based on principles and not merely on subsumptions (Grondin, 2019).

Since 2008, constitutional jurisprudence has identified both general and particular problems within the health system. In resolving these cases, it was established that health disputes should be settled on the basis of the system's own regulations, prioritising the human person and his or her dignity (Dworkin, & Guastavino, 2012). In this sense, health must be analysed both from its ontological dimension - as a phenomenon that studies the whole person - and from its epistemic dimension, through medical knowledge and its application. In this framework, the judicialisation of the medical act and medical health liability (RMS) must be understood from within the health system and the doctor-patient relationship within it, not from approaches outside the system that do not recognise affiliation and contribution as structural elements of the system.

Likewise, principlism has been identified as the fundamental axis for the interpretation of the health system, which reinforces the need for a Special Jurisdiction in DMS and RMS. This article, therefore, proposes the creation of an autonomous Medical Health Liability Regime in Colombia, recognising that the medical act is already judicialised in both the political and legal spheres, due to the extensive normative framework that regulates the system. In short, the contemporary philosophy of care - based on the ethics of otherness and interdependence - requires rethinking health as a relational phenomenon, where the State has an active responsibility in guaranteeing dignified conditions of existence. The principle of solidarity, articulated in the Colombian model, must be assumed not as a fiscal device, but as a political commitment to the most vulnerable.

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