

## THE CHAPTER VI

## THE ORGANIZATION, STRUCTURES AND THE PUBLIC FUNCTIONS OF THE STATE



**I. THE DIALOGUE CONSTITUTIONAL: THE REPUBLIC OF COLOMBIA HAS AN BRANCH EXECUTIVE, LEGISLATIVE AND JUDICIARY**

**ARMANDO:** Victoria, how different it seems it turns for television the Building of the Congress of the Republic, the palace presidential, the building of the Supreme Court of Justice, the Council of State and the Constitutional Court, the Cathedral of *Bogotá* and Bolivar's Square. The reality overcomes the fiction and even the virtual view for TV to Bogotá. This city today in day has become a cosmopolitan city and ordinate that envies anyone another of the world in anything, because has as all European city: a historical part with monumental constructions as those that we are seeing; and another modern part, with constructions time-share, schools, universities, hospitals, supermarkets united by avenues, freeways, streets, green areas, pedestrian areas, parks very cares. It is of highlighting that starting from the year 2000, "*Transmilenio*" became the means of collective urban transportation of Bogotá that more people transport among these both big parts of the city and that she has become a worthy model of transport of being exported to other cities of Colombia and of the abroad.

- VICTORIA:** All reason has Armando. You look up: the Hill and the Chapel of *Monserate*, what impressive. *Bogotá* as our father says, not alone it is the capital of Colombia, but rather it is the capital of the branches of the executive public power, legislative and judicial and also of the organism of control fiscal (The Comptroller), control of the conduct of the servants of the State and defender of the human rights (The Public Ministry and *The Ombudsman*) and of the electoral organisms (Registrar National of the Civil state and National Electoral Council). It is usually said: *Bogotá* is the capital of the dome and the organic structure of the State.
- LUCIO:** In Bogotá, we all can know the public buildings where labor daily the President and Vice-president of the Republic, the Ministries of the Cabinet and the Directors of Administrative Department, which are part of the Executive Branch of the Public Power. Equally we can know the impressive rooms of the High Courts of Justice that make part of the jurisdictional branch where they emit their judicial providences the collegiate judges or magistrates. Likewise the monumental living rooms of sessions of the Parliamentarian (Senators and Chamber of the Representatives), belonging to the legislative branch and where laws are dictated; and in short, the public offices of the Ombudsman, the General Comptroller and Procurator of the Republic, the Prosecutor General of the Nation, the Registrar National of the Civil state and authorities of the force public military and the police. All told this, to come to Bogotá is makes a tourism for the Colombian public power.
- MARÍA PAZ:** That said by all, evidence that Colombia is a “*Unitary Republic*” with three-division of the public power and that the visible heads of the servants of the State are centralized in the capital of the Republic, but at level departmental, districts and municipal they are other regional and local authorities are decentralized that they belong at three or better the two branches of the power: executive and judicial. I say two, because the legislative branch doesn't exist in the departments and the municipalities, although some estimate mistakenly that they are represented in the Assemblies and the Municipal Councils. Besides the three branches of the public power, they exist other organs of the State that make part of the organisms of control fiscal, control of conduct of the state servants and of electoral control and although these have autonomy and independence regional and local to operation and management, they are hierarchical authorities at national level. In short dear children, Bogotá is the city, center of the life political, social, cultural, tourist and financial of Colombia.
- LIBORIO:** Clear this family that Bogotá is that and much more. However, let us don't forget that the high servants or officials of the State, have many and more complicated functions; but at the same time, they have bigger responsibilities social, political and juridical that individuals particular. Maybe for that of their special condition of authority of the Republic, these are obliged to respond for their actions, for what omissions and even for their outrages or abuses in their public functions. Well, dear children, every servant of the State has an ethics Code, of obligations, of responsibilities and even of restitution until with his own goods, if it has harmed to the State with his actions or omissions. This is very well in a Social State and democratic of right as ours.

## II. THE CONSTITUTIONAL LESSON: THE THREE-DIVISION OF THE PUBLIC POWER AND THE ORGANISMS OF CONTROL FISCAL, OF CONDUCT OF THE PUBLIC SERVANTS AND OF ELECTORAL

### THE POWER PUBLIC, TO LEAVE OF THE CONSTITUTION OF 1991

Colombia as State with Republican Government, today in day has three branches of the public power: Executive or administrative, legislative and judicial. Each one of these, they has a dome or Maximum authority that it represents it at national, departmental and municipal level, although in these last ones it is necessary to make some explanations.

However, at par and jointly with these three branches of the public power, other national organisms that exercise jurisdiction and competition in the throughout Republic exist and although they don't make part of some new branches of the power, yes they act as such and with same constitutional and legal prerogatives so much structural as functional. Indeed, the General Comptroller of the Republic is the organism of the control fiscal, economic or financial from the State to national level. The Public Ministry and *The Ombudsman* are the organisms of control of the conduct of the Servants of the State and the defense, promotion and divulgation of the human rights, respectively. These entities form the calls "*Organisms of Control*" of the State.

Equally, without being branch of the public power, the electoral organisms, as the Electoral National Council and the Registrar National of the Civil state of the persons, complete national functions and their representatives have conditions and functional privileges that those of the three branches of the public power.

Maybe all told it, today in Colombia we have a State structured in three branches of the public power and some organisms that with equal to be able to that these have not reached the name of new branches of the public power in the Constitution of 1991, although in the practice nobody doubt that they are it.

At Departmental level, District and Municipal, the traditional branches of the public power (executive, legislative and judicial), they have hierarchical representations some and autonomous other that make see that the national public power extends until the regions and municipalities. This special situation of the structure of the Colombian State, makes it only in the world, because although the judicial branch has a rigid nested power from the three High Courts (Supreme, Constitutional and Council of State) until the last fiscal or judge of the Republic; it doesn't pass this way with the executive or administrative branch, because the President and Vice-president of the Republic, Ministers and Directors of Department administrative, they have autonomy and reciprocal structural independence of the departmental executive authorities (The Governor, Secretaries of Cabinet and Directors of decentralized Entities) and municipal (The Mayor, Secretaries of the Cabinet and Directors of decentralized entities). Here a hierarchy doesn't exist some.

Plus Still, in the legislative branch of the power represented in the Congress of the Republic (Senate and Chamber of Representatives) authorities they don't exist with equals functions and privileges in the departmental level, district and municipal, because the Departmental Assemblies and the Municipal Councils and districts they are not legislative organisms but administrative Corporations of popular election that emit acts administrative calls "*Ordinances Departmental*" and "*municipal Agreements*", respectively. In this case, the branch of the legislative power in Colombia is centralized in a system "*Bicameral*": Congress of the Republic and The Chamber of Representatives

### III. THE CONSTITUTIONAL GLOSSARY

**ADMINISTRATION PUBLIC:** It is the group of organisms, dependences, entities and annexed public offices that belong to the executive branch of the power and which complete functions and administrative procedures of management, action and development to the community.

**BRANCHES OF THE PUBLIC POWER:** they are the parts in that the public power is divided, those which in Colombia, they have separate functions but they collaborate harmoniously for the realization of its purposes.

**CAUSAL DE INCOMPATIBILIDAD:** They are constitutional and legal impediments for which the servants of the State cannot perform a position or public employment jointly with other activities, circumstances, conditions or legal status. For example, won't be able to name their relatives or their wife in public positions in those that he has interference or it is the hierarchical superior. Equally it cannot contract with enterprises public and individuals in those that have interest of any type.

**EXECUTIVE OR ADMINISTRATIVE BRANCH:** It is the division of the public power that has as principal function of executing, to observance and to make complete the effective ordinance juridical (Constitution, laws, ordinance-laws and administrative acts) and the sentences.

**FREE UNION:** A man's Union and a woman sole, without rite some and that it pursues the ends similar to those of a civil marriage or Catholic

**MARRIAGE:** A man's Union and a woman sole, for rites religious or civil, and by means of which put under an obligation mutually to be helped, to be aided, to form a patrimony and to procreate.

**LEGISLATIVE BRANCH:** it is the division of the public power that has as principal function the one of creating laws. These can be: ordinary, organic, statutory and approbatory of international treaties.

**JUDICIAL BRANCH:** It is the division of the public power that has as principal function the one of solving the conflicts of jurisdiction ordinary (of civil, labor, commercial character, of family and penal); special or Contentious administrative jurisdiction (conflicts between the State and the individuals) and constitutional (conflicts between the State and the individuals or enter these), by means of judicial providences (sentences or judgments)

**ORGANISMS OF CONTROL:** they make part of the public power and they have as principal function the control or to oversee of the government finance of the State, the conduct, execution and responsibility of the servants of the State and the inscription, registration, statistic and official information service of the civil state of people and the throughout relative to the electoral régime.

**PARLIAMENTARIAN:** Members of the Congress and of the Chamber of Representatives, which complete legislative functions and that in the case of the Congress they are denominated congressmen, and in the eventuality of the Chamber they are denominated representatives.

**POWER PUBLICS:** It is the attribution fuses you that it legitimates to the branches and organisms of the State, which becomes of the sovereignty of the people. The State is the holder of the public power. The public power is only and indivisible. However, for their exercise, actions or management it is distributed in branches or divisions of the power. This way, we find the executive or administrative branch, the legislative branch and the judiciary branch, the three jointly with organism of control (fiscal, of conduct and electoral) they constitute the Colombian public power.

**PUBLIC TREASURE:** Group of goods, supreme of money, securities and component quantities of the treasury (Tributes: taxes, rates and contributions). They make part of the treasury those belonging to the nation, to the territorial entities (departments, districts and municipalities), and the entities decentralized by services.

**RELATIONSHIP:** Legal bond that produces juridical goods and it can be consanguineous, of likeness or civil. The consanguineous bond is of blood. Within is this the parents, siblings, children, uncles, nephews are. The bond of likeness is the corresponding to the husband's relatives or common law spouse. Here the in-laws and the brother-in-laws are. The civil bond is derived of the law: Within is this, the parents or children adopted and adoptive.

**SERVANTS OF THE STATE:** Also known as "*Public Servants*", they are either people that complete functions in the State, in the national, departmental public Corporations, districts or municipal (The Congress of the Republic, The Assemblies Departmental and The Municipal Councils), the entities decentralized territorially (Departments, Districts and Municipalities) and for services (Industrial and Commercial Enterprises of the State, Social enterprises, Societies of Mixed Economy and Public Establishments). They are also considered public servants the employees and workers of the State in any administrative and territorial level. The public Servants are to the service of the State and of the community; they exercise their functions of conformity with the effective Ordinance juridical.

#### IV. THE CONSTITUTIONAL PRECISION: THE ORGANIZATION, STRUCTURES AND PUBLIC FUNCTIONS OF THE STATE

##### TITLE V THE ORGANIZATION OF THE STATE

The Title V of the Constitution contains nineteen (19) articles and two chapters, referred to: **First:** The Structure of the State (articles 133 at 121), and **Second:** The public function (articles 122 a 131).

The articles refer to the following:

## THE ORGANIZATION OF THE STATE

(Articles 113 at 121 of the Constitution)

1) **Three-division of the public power.** The Branches of the Public Power are the legislative, the executive, and the judicial.

Besides the organs that integrate them they exist other, autonomous and independent, for the fulfillment of the other functions of the State. The different organs of the State have separate functions but they collaborate harmoniously for the realization of their purposes.

2) **Legislative branch represented in the Congress of the Republic.** It corresponds to the Congress of the Republic to reform the Constitution, to pass laws and to exercise political control on the government and the administration.

The Congress of the Republic, it will be integrated by the Senate and the Chamber of Representatives

3) **Executive branch represented by the President of the Republic and the National Government.** The President of the Republic is Chief of the State, head of the Government and supreme administrative authority.

The National Government is formed by the President of the Republic, the cabinet ministers and the directors of administrative departments. The President and the Ministry or corresponding Director of Department, in each particular business, they constitute the Government.

No act of the President, except the appointment and dismissal of ministers and directors of administrative departments and those acts decreed in his capacity as head of state and supreme administrative authority, will have any value or force whatever as long as it is not countersigned and communicated by the minister of the respective office or by the director of the appropriate administrative department who, by virtue thereof, become responsible for same.

The governorates and the mayoralties, as well as the Superintendence the public establishments and the industrial or commercial enterprises of the State, are part of the Executive Branch.

4) **Judicial branch represented for:** The Constitutional Court, the Supreme Court of Justice, the Council of State, the Superior Council of the Judicature, the Office of General Prosecutor, the Tribunals and the Judges, they administer Justice. Also makes it the Military Penal Justice.

The Congress will exercise certain judicial functions.

Exceptionally the law may attribute jurisdictional function in precise matters to certain administrative authorities. However it won't be allowed them to advance the instruction of summaries neither to judge crimes.

The individuals can be invested transitorily of the function of administering justice in the condition of juries in the criminal prosecutions, conciliatory or in that of arbitrators enabled by the parties involved to hand down verdicts whether at law or in equity, within the limits determined by law.

5) **The Organisms of control.** The Public Ministry and the Comptroller General of the Republic are control organs (or supervisory agencies).



6) **Control of the Official Conduct of the State.** The Public Ministry will be exercised by the General Procurator of the Nation, for The Ombudsman, for the procurators delegates and the agents of the public ministry, in the face of the jurisdictional authorities, for the procurators municipal and for the other officials that it determines the law. To the Public Ministry is corresponds the guard and promotion of the human rights, the protection of the public interest and to oversee the official conduct of those who perform public functions.

7) **Organism of Control fiscal and of result of the Administration.** The Office of the Comptroller General of the Republic has the duty for the oversee management and the fiscal control and of result of the administration.

8) **The Organisms Electoral.** The Electoral Organization will be conformed by the Electoral National Council, by The National Registrar Office of Civil Status and of the other organs established by law. It is responsible for the organization of the elections, their direction and supervision, as well its matters relating to the identity of people.

9) No authority of the State may exercise functions different from those assigned to it by the Constitution and the law.

#### **THE PUBLIC FUNCTIONS (Articles 122 at 131 of the Constitution)**

10) **Constitutionality and Legality of the position and the function public.** There won't be employment public that doesn't have functions detailed in law or regulation and to provide those of remunerated character it is required them to be contemplated in the respective plant and provided their emoluments in the corresponding budget.

No public servant will enter to exercise his position without lending oath of to complete and to defend the Constitution and to perform the duties that concern him.

Before occupying his position, when retiring of the same one or when competent authority requests it to will declare, under oath, the amount of its property and revenues.

This declaration will only be able to be used for the purposes and intentions of the application of the norms of the public servant.

11) **Servants of the State.** They are public servants the members of the public corporations, the employees and workers of the State and of their entities decentralized territorially and for services.

The public servants are to the service of the State and of the community; they will exercise their functions in the form provided by the Constitution, the law and the mid regulations.

The law will determine the applicable régime to the individuals that temporarily they perform public functions and it will regulate its exercise.

12) **Responsibility of the public servants.** The law will determine the responsibility of the public servants and the manner to make it effective.

13) **The employments of the career civil of the State.** The employments in the organs and entities of the State are of career civil. They are exceptions: Those of popular election, those of free appointment and removal, those of official workers and others determined by the law.

14) **Causal constitutional of incompatibility of the public servants for relationship and marriage:** Public servants may not appoint as employees individuals to whom they are related up to the fourth level of consanguinity (first cousins), affinity two ranks removed (in-laws and brother-in-laws), or one rank removed in civil law (parents or adopted children), or with whom they are bound through marriage or permanent union (or common law spouse). Neither may they designate individuals related in like manner to public servants who are in a position to intervene in their designation.

Excepted from what is prescribed in this article are those appointments that are made in application of existing regulations relating to entry or promotion through merit.

15) **Causal constitutional of incompatibility of the public servants for state recruiting.** Public servants may not enter into, on their own or through intermediating individuals or in representation of another, any contract with public entities or private individuals who handle or administer public funds, except when legal exceptions apply.

16) **Concomitant incompatibility constitutional with the position and function.** No one may hold simultaneously more than one public position nor receive more than one salary originating from the public treasury, or from enterprises or institutions in which the state is a majority owner, except in cases expressly determined by the law. Public treasury means that of the nation, that of the territorial entities, or that of the decentralized entities.

17) **Concomitant constitutional incompatibility with the position for favors of Foreign Governments.** Public servants are not entitled to accept positions, honors, or compensation from foreign governments or international organizations or enter into contracts with them without prior authorization from the governments or international organizations or enter into contracts with them without prior authorization from the government.

18) **The National Commission of Civil Service.** There will be a National Commission of the Civil Service responsible for the administration and supervision of the careers of the public servants, except for those in a special category.

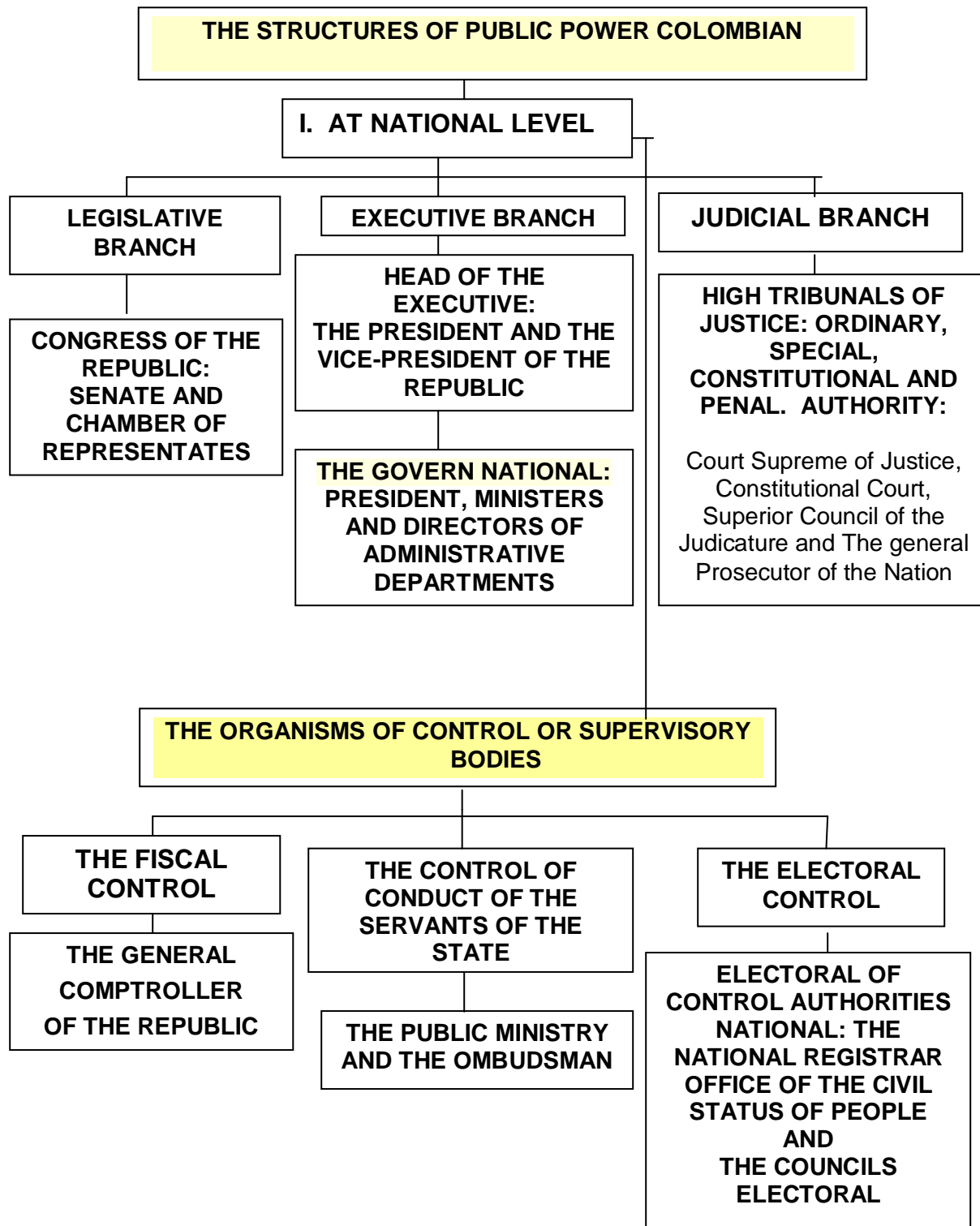
19) **Statute of the Notaries.** It concerns to the law the regulation of the public service that the Notaries and Registrars, the definition of the labor régime for their employees and the system of levies of the Notary Public for the purpose of the administration of justice.

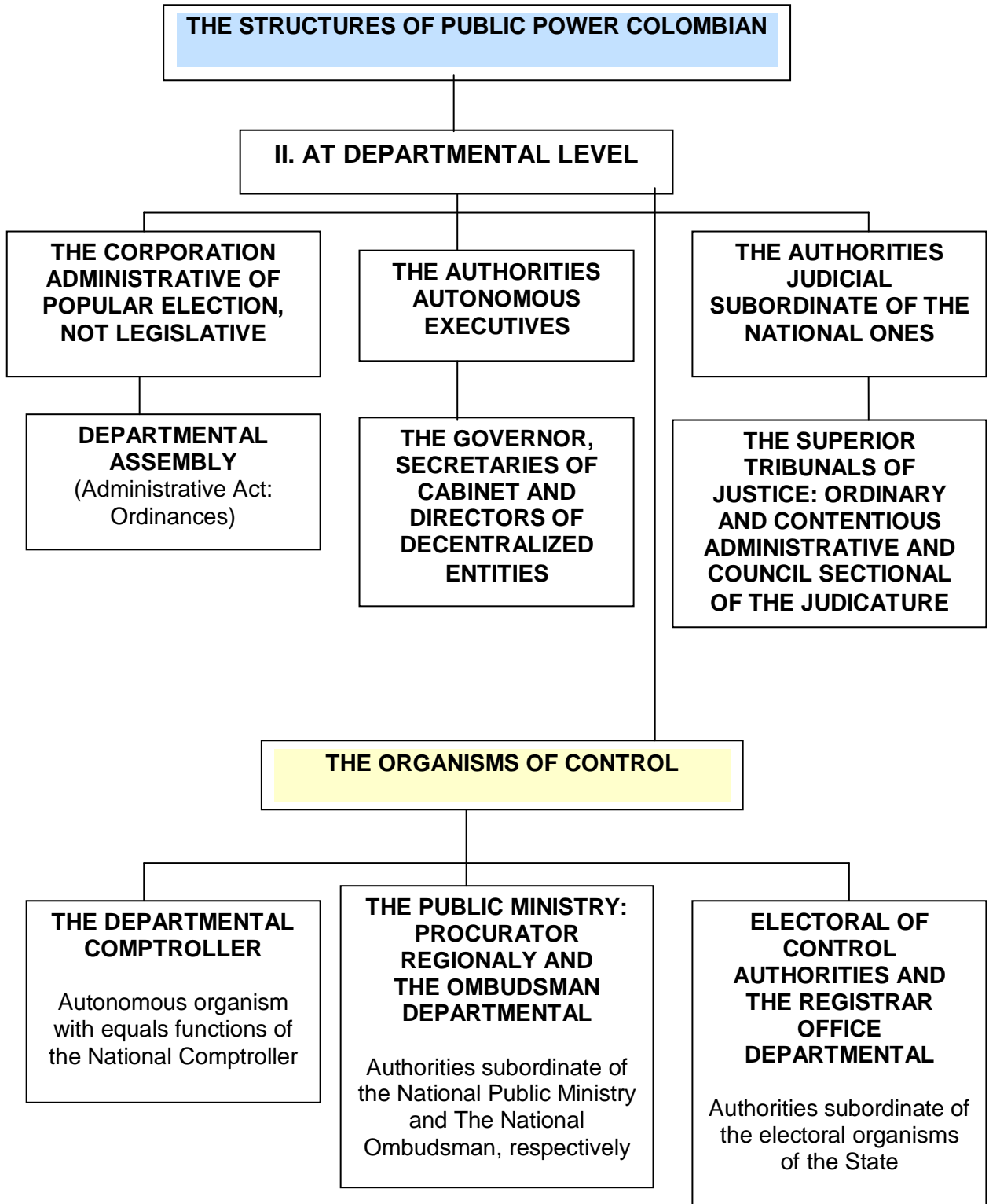
Appointment to the status of Notaries will be effected on the basis of a competitive examination.

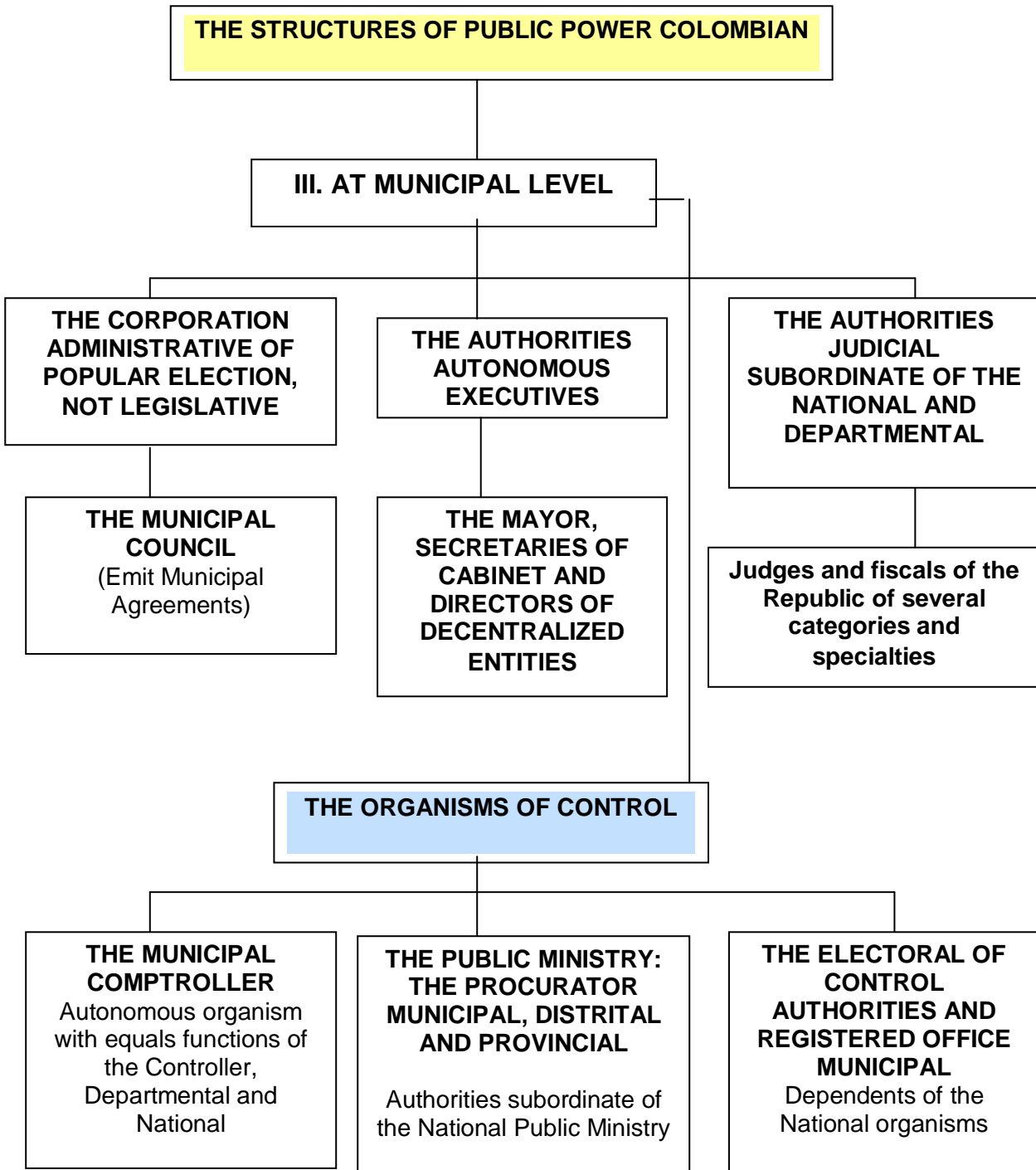
It corresponds the government the creation, suppression and coalition of the offices of registration and Notaries and the determination of the number of notaries and registration offices.



**V. THE CONSTITUTIONAL READING: THE DIAGRAM OF THE ORGANIZATION OF THE PUBLIC POWER COLOMBIAN**







## VI. THE ACTIVITIES OF THE STUDENT

### I. Supplement the following propositions:

1. The public administration is \_\_\_\_\_  
\_\_\_\_\_
2. The executive branch is \_\_\_\_\_  
\_\_\_\_\_
3. The legislative branch is \_\_\_\_\_  
\_\_\_\_\_
4. The judicial branch is \_\_\_\_\_  
\_\_\_\_\_
5. The Organisms of control (or Supervisory bodies) are \_\_\_\_\_  
\_\_\_\_\_
6. The Servants of the State are \_\_\_\_\_  
\_\_\_\_\_
7. The Organisms of electoral are \_\_\_\_\_  
\_\_\_\_\_
8. The Relationship is \_\_\_\_\_  
\_\_\_\_\_

### II. Mark with an X, the correct answer to the following propositions:

1. in Colombia, the public power is divided in branches and organisms:
  - a) Economic, executive and judicial
  - b) Political, executive, legislative and judicial
  - c) Executive, legislative and judicial
  - d) Executive, legislative and judicial and organisms of fiscal control, of conduct of the servants of the State and of electoral control.
  - e) Executive, legislative and judicial and organisms of electoral control

**2. The national executive branch of the public power this conformed for:**

- a) The Congress of the Republic
- b) The Supreme Court of Justice and the Constitutional Court
- c) The President of the Republic, the Ministers and the Directors of administrative Department
- d) The President of the Republic and the Ministers
- e) The General Procurator of the Nation

**3. The Organisms of control at national level are:**

- a) The Comptroller fiscal and the Public Ministry
- b) The Comptroller fiscal, the Public Ministry and The Ombudsman
- c) The Comptroller fiscal, the Public Ministry and The National Registrar of the Civil state
- d) The Comptroller fiscal, the Public Ministry, The Ombudsman, The National Electoral Councils and the National Registrar of the Civil state
- e) The Comptroller fiscal, the Public Ministry and The National Electoral Councils.

**4. The concept of Public administration is applied in principle in:**

- a) The legislative branch
- b) The executive branch
- c) The judicial branch
- d) The organism of control
- e) The Ombudsman

**5. They belong to the judicial branch at municipal level:**

- a) The Mayors
- b) The Governors
- c) The councilmen and deputies
- d) The judges and fiscals
- e) The National Registrar of civil state and procurators

**6. the public servants in Colombia are joined to the State, this way:**

- a) career employments, popular election and as official workers
- b) career employments, election popular, free appointment and removal and as official workers
- c) career employments and as official workers
- d) employments of popular election and as official workers
- e) career employments and popular election

**VII. THE ACTIVITIES OF THE STUDENT AND THE PROFESSOR**

- I. In study symposium examine and express their opinions on the following themes:**
1. What do advantages and disadvantages observe in the three-division of the public power in Colombia?
  2. The function to enact laws in Colombia this centralized in the Congress. What do benefits or damages bring to our country the legislative centralization?
  3. The President is Head of Government and Head of State in Colombia and it is part of the executive branch. What do positive aspects or negatives observe in this respect?
  4. Your you have listened in the radio and in television that the Public Ministry advances disciplinary procedures against Mayors, Governors and other officials, for reasons of non fulfillment of its duties as servants of the State. It is correct this to act of the Public Ministry? Why?
  5. The traditional Colombian public power is divided in the executive, legislative and judicial branch. Also, the organisms of control exist: the fiscal control, of control of the conduct of the servants of the State and those of electoral control. Do we ask: is The State enlarging the defense of the human rights through these organisms?