



# Legal Nature of the Community Councils in Venezuela

## Naturaleza jurídica de los Consejos comunales en Venezuela

Andreina Campos López\*, Mirtha López Valladares\*\*, Luisa Gamboa Ferreira\*\*\*

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### Abstract

The 21st century is a historical milestone for new ways of managing public affairs, as a result of the political, social and economic transformations that were generated in various countries in South America, in which Venezuela is the protagonist with the approval of the Constitution of the Bolivarian Republic in December 1999; based on the organization of society for participation in decision-making on matters of collective interest. In this perspective, the Community Councils arise. Therefore, they constitute the interest of the investigation to characterize the applicable legal regime in Venezuela, according to the theoretical contributions and the institutional devices that comprise them. It is a descriptive investigation, with a documentary design. The findings reveal: since the constitutional precepts, regulations for community organization and participation were created, referring to the Communal Councils, which have been the subject of discussion about the nature of their actions, based on the legal nature; it is evident that its praxis responds to features of a mixed legal nature, that is, constitutional and community. It is concluded that the Communal Councils must advance in the legal recognition of the actions related to certain competences of the public administration, to build the administrative and legal bases for an innovative community development community management.

**Key words:** Community Councils, participation, community management, legal nature.

\* Lawyer, Architect. Center for Business Studies of the School of Economic and Social Sciences, Universidad del Zulia, Zulia, Venezuela.

E-mail: andreina\_27@hotmail.com  
ORCID: 0000-0002-7790-0002

### Google Scholar

\*\* PhD in Social Sciences, mention Management. Center for Business Studies of the School of Economic and Social Sciences, Universidad del Zulia, Zulia, Venezuela.

E-mail: lopez\_mirtha@yahoo.com  
ORCID: 0000-0002-8993-7291

### Google Scholar

\*\*\* PhD in Social Sciences, mention Management. Center for Business Studies of the School of Economic and Social Sciences, Universidad del Zulia, Zulia, Venezuela.

E-mail: lgamboafereira@gmail.com  
ORCID: 0000-0001-8424-996X

### Google Scholar

## Resumen

El siglo XXI es un hito histórico para las nuevas formas de gestionar los asuntos públicos producto de las transformaciones políticas, sociales y económicas que se generaron en varios países de América del Sur, en donde Venezuela es protagonista con la aprobación de la Constitución de la República Bolivariana en diciembre de 1999; fundamentada en la organización de la sociedad para la participación en la toma de decisiones en los asuntos de interés colectivo. En esa perspectiva, surgen los Consejos Comunales. De ahí que constituye el interés de esta investigación caracterizar el régimen jurídico aplicable en Venezuela, de acuerdo a los aportes teóricos y de los dispositivos institucionales que los conforman. Es una investigación descriptiva con un diseño documental. Los hallazgos revelan: desde los preceptos constitucionales se crearon normativas para la organización y participación comunitaria referidas a los Consejos comunales, los cuales han sido objeto de discusión sobre la naturaleza de su actuación en función al carácter jurídico; se evidencia que su *praxis* responde a los rasgos de naturaleza jurídica mixta, es decir, constitucional y comunitaria. Se concluye que los Consejos comunales deben avanzar en el reconocimiento jurídico de las acciones vinculadas con determinadas competencias de la administración pública para ir construyendo las bases administrativas y legales para una gestión comunitaria innovadora del desarrollo de la comunidad.

**Palabras clave:** Consejos comunales, participación, gestión comunitaria, naturaleza jurídica.

## Introduction

In the context of the eighties, political and administrative changes took place in Venezuela in the state apparatus, in order to promote the process of state reform, by the Presidential Commission for State Reform (COPRE for its acronym in Spanish), with the purpose of “bringing power” closer to the citizens, through the so-called process of decentralization of competences. As a result of this reform, political progress was made with the popular election of regional and local authorities; while, administratively, some public powers were transferred from the national government to the regional and municipal government.

At the end of the nineties, changes to this conception of State reform began, in December 1998, with the holding of presidential elections, in which Hugo Rafael Chávez Frías was elected, who promoted the formation of a Constituent Assembly for the creation of a new Magna

Carta of the country, which was later approved in 1999, through an approval referendum by the Venezuelan people as the Constitution of the Bolivarian Republic of Venezuela (CRBV for its acronym in Spanish).

In the C RBV, structural changes are established in the conception of the State, the economic model and Venezuelan society, with special attention, in the participation of citizens, communities and other forms of organization of society for their intervention in the public policies and management. Also, the possibility of creating open and flexible participation mechanisms is foreseen in order to promote the decentralization of powers from governments to the different levels of government and, fundamentally, directly to organized communities.

In this constitutional perspective, on the participation in public management, the Community Councils were approved as a form of organization of the communities, with the Law of the Communal Councils of 2006, whose praxis in the different territorial spaces in the country, were demanding the incorporation of management elements and the expansion of others established in the aforementioned Law, also as a result of responding to the political and economic reality of that time. From there, the Organic Law of the Communal Councils was approved in 2009, which contains the institutional guidelines that constitute the platform for community management; in addition, the creation and approval of a set of legal regulations that support them.

In the dynamics of the management of the Communal Councils, actions of the spokespersons take place, such as, acts, letters and records in the exercise of their functions as those responsible for community management, which has been the subject of different legal discussions, in particular, with the elements that categorize its legal naturalization, as well as the appreciation of whether or not it has identity. Hence, the relevance of the investigation to characterize the legal regime applicable to the Communal Councils in Venezuela.

## Materials and Methods

Innovation in the management of matters of collective interest has been accentuated in the last two decades, as a central theme in the formulation of public policies; the participation of the society propitiates the development of a participative democracy, in this sense, the present investigation is approached following the epistemic perspective of the Systemic Interpretive Theory of the Organizations (Fuenmayor, 2001).

This epistemic perspective provided the cognitive platform to approach the different perspectives on the legal nature of the Communal Councils in Venezuela, from the hermeneutical method for the interpretation of the legal instruments that underlies the actions of these Councils.

The methodological intention is to reveal the features that these community organizations configure, through the investigative path based on legal hermeneutics that outlines the complexity of the different actions within the framework of the constitutional and institutional guidelines, through the search for information in different legal documentary sources that enable the reconstruction of community management knowledge.

That is why the research is based on the systematic review of legal and institutional documents, containing the nature of community organizations in Venezuela; therefore, it is categorized as a descriptive research that allowed the interpretation of key components that categorize the legal nature of the Communal Councils, following the doctrine of law in the country; with a documentary research design, since it is based on the collection, classification, analysis and interpretation of information from secondary physical and electronic sources.

Based on this, the socio-historical context on which Venezuela has developed, the policy of organizing the communities for their participation in public and community management is described; as well as the different positions of theorists and jurists on the nature of the actions of the management of the Communal Councils in order to interpret these positions, according to the legal precepts and jurisprudence on the matter.

Finally, the interpretation of legal hermeneutics enabled the systematization of the components of community management, through the cognitive legal and institutional platform, in which the mixed legal nature of the Communal Councils is categorized.

## Results

### ***Socio-Historical Context of the Organization for Community Participation***

In Latin America and the Caribbean, in the last two decades, most governments have considered and implemented ways of managing the public, different from traditional administration schemes with bureaucratic styles, by an inclusive and participatory management model, through the formulation of public policies for the transformation of society.

In Venezuela, since the beginning of the period of democracy at the end of the fifties, economic power groups had a direct impact on the different policies on public management, which was incorporated into the guidelines provided for in the National Constitution —NC— of 1961, which characterizes representative democracy. In terms of political participation, the NC of 1961 only proposes the election of the national executive power, while, in relation to the intervention in public decision-making by the communities, it is not considered.

This perspective of public management was maintained until the end of 1980, in which governments were losing legitimacy and society was sued and demanding greater attention to their needs, which generated a set of political and social pressures, which led to the national executive government approved the implementation of the State Reform process, specifically, in 1984, through the COPRE, based on the constitutional precepts of 1961.

This reform process is institutionalized with the approval on April 28, of 1989, of the Organic Law of Decentralization, Delimitation and Transfer of Powers of the Public Power —LOD—, in order to:

Develop constitutional principles to promote administrative decentralization, define competencies between the National Power and the States, determine the functions of the Governors as agents of the National Executive, determine the sources of income of the States, coordinate the annual investment plans of the Entities Federal with which the National Executive performs in them and facilitate the transfer of the provision of the services of the National Power to the States. (Art. 1)

On the other hand, in the framework of representative democracy, in 1989, direct and secret elections were approved and carried out by the executive authorities of the governorates and mayors in the country, that is, political participation. This led to reform regulations on municipal governments. Specifically, the Organic Law of the Municipal Regime of 1978 and its Partial Regulation No. 1 of 1979 on Neighborhood Associations; in this sense, the approval of the Organic Law of Municipal Regime of 1989 and, therefore, of Partial Regulation No. 1 of 1990 on the Participation of the Community is given.

Regarding this last regulation, the title of the same is modified. However, in the content of the policy on participation, there are no articles about the direct intervention of the Neighborhood Associations, as forms of organization of the communities. Furthermore, in practice they were penetrated by the interests of the political parties in power in the government, which further limited their actions as an instance of the community. Quijada (2004), point to this appreciation of the role of the Neighborhood Associations:

Like the rest of civil society, they were subjected to the dominance and management of the predominant political parties, such as Acción Democrática and COPEI; since they dominated the political-administrative scenario, at the different levels of power distribution in Venezuela, during the last three decades of the National Constitution of 1961. (p. 2)

In practice, in this decade of the eighties in Venezuela, despite COPRE discourse, the legal instruments approved did not establish mechanisms and spaces for the direct intervention

of communities in matters of public interest, at different levels of government; as well as through community management.

In December of 1998, with the victory in the presidential elections of Hugo Rafael Chávez Frias, the creation of a new Magna Carta was promoted through the call for the formation of the Constituent Assembly, which was in charge of the process of construction of the precepts constitutional from the various proposals presented and discussed in public and private spaces in the country; which were submitted to a referendum, held on December 15 of 1999 (López, 2001).

The CRBV of 1999 establishes a conception of the State, different from that foreseen in the NC. Article 2 indicates:

Venezuela, is constituted in a democratic and social State of Law and Justice, which advocates as superior values of its legal system and its actions, life, freedom, justice, equality, solidarity, democracy, responsibility social and in general, the preeminence of human rights, ethics and political pluralism.

This conception of the State, which connotes its democratic and social character of Law and Justice, reinforced in the express values, such as, equality, solidarity, democracy, political pluralism, among others, establish participation in the management of matters of public interest without any distinction of persons. All of them form the basis for the formulation of public policies in the different matters of competence of government entities; in this sense, the CRBV, following López (2001), incorporated structural elements for the transformation from a conception of representative democracy to participatory and leading democracy in the different dimensions of the task of Venezuelan public management.

Based on these constitutional precepts, the Venezuelan State promoted a new conception of citizen participation based on its intervention in decisions, execution, monitoring and control, and evaluation of public policies; with the approval of instances of participation in all levels of government, both for organized communities and for the integration of public entities: Local Councils for Public Planning (municipal government), Planning Councils and Coordination of Public Policies (regional government), and the Federal Government Council (national government) (National Assembly of 1999, Articles 182, 161, 185).

It should be noted that, in the legal precepts of the creation of the Local Councils for Public Planning of 2002, the foundations appear for the incorporation of organized communities in matters of municipal public management, conducive to constituting the territorial area in which they live people and, with it, the perspective of community management through the creation of the Community Councils, later.

In this legal context, the initiative to create the Communal Councils arises, as an instance of direct participation of people in public management through community management; by President Chávez, which was discussed by the different bodies with jurisdiction over the matter and, finally, the Law on Communal Councils —LCC— was examined and approved in 2006 by the National Assembly of Venezuela. Article 1 expresses as its object: “to create, develop and regulate the formation, integration, organization and operation of the Communal Councils and their relationship with the State bodies, for the formulation, execution, control and evaluation of public policies.”

On the other hand, this public policy of organization of the communities, through the Communal Councils, arises as a way to materialize the direct participation of the communities in public management; given that the political context after the approval of the Local Public Planning Councils (CLPP for its acronym in Spanish), extremely limited this participation, through the non-conformation of these Councils, by some municipal authorities.

These incidences of legitimation by the public authorities and, from greater demands from the communities to expand their participation in public affairs, from their praxis, led to reform of the LCC, and even elevating in legal hierarchy as Organic Law of the Community Councils (LOCC for its acronym in Spanish), in 2009, the purpose of which is expressed in article 1:

Regulate the constitution, conformation, organization and operation of the communal councils as an instance of participation for the direct exercise of popular sovereignty and its relationship with the organs and entities of the Public Power for the formulation, execution, control and evaluation of public policies, as well as plans and projects related to community development.

Likewise, a new conception of the Communal Councils is established:

Instances of participation, articulation and integration between citizens (male and female) and various community organizations, social and popular movements, which allow the organized people to exercise community government and direct management of public policies and projects aimed at responding to the needs, potentialities and aspirations of the communities, in the construction of the new model of socialist society of equality, equity and social justice. (Art. 2)

The public policy of organization and participation of the communities constitutes an advance in management innovation, following the terms expressed by Monsiváis (2013), who points out that “to promote relevant public policies for democracy is precisely that of participation in public policies” (p. 32). In this context of political innovation (López, 2008), the Communal Councils appear as instances in which participatory and leading democracy takes shape,

understanding participation as the meeting between the rulers and organized communities in order to provide answers to matters of collective interest (Fadda, 1991).

## Discussion

### *The Legal Nature of the Communal Councils in Venezuela*

As it has been mentioned in the socio-historical development of the organization of communities in Venezuela, the Communal Councils constitute forms of organization of society for participation in public policy and management and, in particular, in community management, which have marked a milestone in the construction of knowledge on the management of public affairs, from the managerial practice of citizens, which has led to continuous discussions on the nature of their powers, as well as the legal nature of their actions; in correspondence, to the constitutional and legal postulates that support the formation and management of the Communal Councils.

Hence, addressing the legal nature of the aforementioned Councils requires clarifying their theoretical conception, which, following one of the classic authors of law, assumes that “the law takes nature as what exists materially or as that which is actually conceived in social valuation” (Estévez, 1956, p. 166). That is why, each Law, is the one that builds for each institution, a structure, which, is known in the doctrine as the nature of the institution, that is, legal nature. Based on this legal assessment and other legal acts, the legal nature of the Community Councils is categorized.

From the perspective of Venezuelan jurisprudence, the legal nature corresponds when decisions are taken, based on certain actions or acts that are executed by the Communal Councils. The Second Court of First Instance in Civil, Mercantile, Transit and Agrarian Matters of the Judicial District of the Vargas State, file 11852 on July 29 of 2011, performs an analysis of the legal nature of the communal councils, in this express sense:

The administrative activity is formed by the set of acts, facts and omissions displayed by the organs of the public power in use of the administrative powers, however, according to the new constitutional guidelines, the provisions contained in the Organic Law of Administrative Procedures are applied to persons under private law invested with authority, to public companies operating in the private sphere, and to private companies regulated by rules of private law that have a public interest purpose.

As a result of the review of the aforementioned final judgment, it is evident that the position of that Court is that the acts of the Communal Councils are not properly acts of authority

and, consequently, are not subject to the provisions on administrative matters and its legal consequences, because it threatens the fundamental institutions of administrative law, since acts of authority are carried out by entities of private law that exercise public powers to satisfy general or collective interests.

Another position on the legal nature of the Communal Councils is the one expressed by Henríquez (2007), who qualifies them as “only community-based, not constitutional or administrative in nature” (p. 91); whereas the author alleges that it constitutes a form of organization of citizens living in the same locality, in the search to respond to common and collective interests.

While, Martorano (2009), classifies the Communal Councils of “mixed legal nature, identified as an association of associations and a social network, which develops public purposes and activities of community interest, based on the exercise of popular sovereignty and citizenship, based on the rights of association and participation.” Both perspectives are distanced in the legal nature. The first one is conceived without an institutional foundation, while the second one incorporates the social with constitutional bases.

Therefore, the perspective of Martorano (2009) has a theoretical and legal basis, within the framework of the precepts established in the CRBV, fundamentally, in two articles 62 and 70. Article 62, expresses that, all citizens:

They have the right to freely participate in public affairs, directly or through their elected or elected representatives. The participation of the people in the formation, execution and control of public management is the necessary means to achieve the leading role that guarantees their complete development, both individually and collectively. It is the State's obligation and the duty of society to facilitate the generation of the most favorable conditions for its practice.

While, article 70, establishes the means of participation and relevance through which citizens participate in the exercise of their sovereignty, in relation to the formulation, execution and control of public administration. There, the legislator leaves the possibility of other forms of organization for citizens and communities; as long as they are based on the values of cooperation and solidarity.

These constitutional postulates express the intervention of citizens for the construction of a participatory and leading political culture, in which a new form of relationship is maintained between Society and the Venezuelan State; subject, among other principles, to subsidiarity, co-responsibility, social solidarity and accountability. These postulates coincide with that stated by Martorano (2009), who categorizes them as mixed legal.

However, to strengthen the criterion of the legal nature of the Communal Councils, it is also pertinent to specify the term of legal personality; Flores (n.d.), institutes that legal personality is the result of the synthesis of two elements, one material, which constitutes the substratum, and the other formal, which reflects the hallmark of the legal system.

Another perspective, in consideration to identify the legal nature, is the distinction between person and personality when, since,

Although they are sometimes used as synonyms and are a consequence of each other, the terms person and personality should not be confused. If a person is all capable of rights and obligations, personality must be understood as the ability to be a subject, active or passive, of legal relationships; you are a person; you have personality. (Castán, 1943, p. 135)

For his part, Cabanellas (1993), defines the person from the natural perspective as “man as a subject of Law, with the capacity to acquire and exercise rights, to contract and fulfill obligations, and to respond for his harmful or criminal acts” (p. 242).

Mora (2007), exposes a contrast between article 10 and article 20 of the repealed Law of the Communal Councils of 2006, based on its precepts, the author points out that, this instance of citizen participation, has to execute “a set of activities without legal personality, but in the case of managing financial resources, the law requires its members to form a cooperative (which does have legal personality)” (p. 141).

Likewise, the author states that the Communal Council does not expressly acquire legal personality in the Law of the Communal Councils of 2006, however, the characteristics provided for regarding the scope of the competences constitute acts of authority and, consequently, the spokesmen and spokeswomen must comply with the provisions regarding administrative activity, and, therefore, respond to the legal consequences that this may entail (Mora, 2007).

However, the author’s statement that the Community Councils do not have legal personality, distances itself from the legal precepts in this regard, since, in the Law on Communal Councils of 2006, in article 20, it expresses: “The registration of the Communal Councils, before the respective Presidential Commission of Popular Power, endows them with legal personality for all purposes.” Therefore, full legal personality is evident for their actions in community management.

Of the arguments raised above, the position on the legal personality of the Communal Councils is maintained in the approval of the LOCC in 2009, in which their legal personality is further strengthened, meanwhile, the endorsement that require by the Ministry of Popular

Power with competence in matters of citizen participation; likewise, that the spokespersons have administrative responsibility, due to the fact that their powers give them an investiture. This is established in article 17, numeral 2, which specifies the responsibility of registering the Communal Councils before the Ministry of Popular Power with competence in matters of citizen participation; that is why, complying with this formal registration procedure, which even requires compliance with the Organic Law on Administrative Procedures; they acquire their legal personality.

Therefore, it is evident that, currently, more formality has been demanded regarding the requirements and formats established in the LOCC, for the registration of the same before the competent Ministry with citizen participation, in order to give legal guarantee in its constitution.

The Communal Councils constitute an instance of organization and participation of citizens, whose legal nature is mixed, that is, constitutional and communal, since the essence of their formation is to give power to the citizen (people), through the participation of citizens, organized communities and other forms of organization of society, in public and community policies and management (decision-making) as established in a minimum of 30 constitutional articles. In addition, its legal basis is in an LOCC on its conformation and operation.

Another foundation to the constitutional nature is found in Venezuelan jurisprudence, in the final judgment of the Trial Court of the Portuguese State Labor Coordination, Guanare, of May 5, of 2011, case: PP01-L-2010-000107. This sentence alludes to the normative antecedents of the Communal Councils, given that these come to constitute a legal figure for citizen participation and the local references that are elaborated from a set of laws:

a) From the perspective of local references, for their conceptual contents in the communal boards/foreign municipalities of the Organic Law of Municipal Regime and its organizational or operational components for citizen and community participation in neighborhood associations.

b) From the planning and development perspectives, the councils as instances of participation have an antecedent in the so-called planning and development councils or the economic and social development councils that are derived from the application of two laws: The Organic Law Decentralization, Delimitation and Transfer of Powers of the Public Power and the Law of the Intergovernmental Fund for Decentralization.

However, the constitutional framework of the communal councils, the constitutional references invoked to support the object and content of the activities of the communal councils, as instances of participation and planning,

that respond to a set of rights and provisions indicated at the time are justified to legally establish this figure of the Communal Councils, initially linked to the Local Councils of Public Planning and integrated into the Municipal Public Power.

From the same perspective, pointed out by the Judge, the legal antecedents of the Communal Councils are developed in the context of participatory planning in public administration and the existence of bodies for the direct participation of citizens, in order to intervene in the different stages of the process of elaboration, formulation, execution and evaluation of public policies. This guaranteed from the constitutional precepts, by expressing that “everyone has the duty to fulfill their social responsibilities and participate in solidarity in the political, civil and community life of the country, promoting and defending human rights as the foundation of democratic coexistence and social peace” (Art. 132).

Another argument about the constitutional nature of the Communal Councils, is what is exposed by Romero (2007), who points them out as a new subject of decentralization, based on what is indicated in number 6, of article 184, of the CRBV, which provides:

The law will create open and flexible mechanisms for the States and Municipalities to decentralize and transfer to the organized neighborhood communities and groups the services that they manage after demonstrating their capacity to provide them, promoting: [...] 6. The creation of new subjects of decentralization at the level of parishes, communities, neighborhoods and surroundings in order to guarantee the principle of joint responsibility in the public management of local and state governments and to develop self-management and co-management processes in the administration and control of services.

From the perspective of the legal nature of the Communal Councils, as public entities of the State, that is, of the decentralized administration, is the affirmation of the First Court of the Administrative Litigation of Caracas, file No. ap42-g-2011-000150 of 2011, between Sociedad Mercantil Inversiones & Construcciones FG Fernández against the Barranco Rosado Community Council, whose decision states:

Thus, it is evident that both the constitution and the law have attributed to the Communal Councils the character of ‘public entities of the state’ in which the people define, execute, control and evaluate public policies and assume the direct and real exercise of popular power, thus being an instance of community government with constitutional rank. Consequently, for those who pronounce here, there is no doubt that the Communal Councils are, by legal and constitutional classification, public entities of the decentralized administration by virtue of being subsumed in the definition contained in article 184 of the Constitution and 2 of the Organic Law of the Communal Councils; as a consequence, as they are public entities,

they must be governed by the regulations concerning public law specifically to the branch of administrative law, which is, which is in charge of regulating the acts of the state as a public administration that is and as such, procedurally has a own jurisdiction which is, the contentious administrative jurisdiction.

In accordance with this perspective, the Second Superior Court for Civil, Commercial, Traffic and Protection of Children and Adolescents of the Judicial District of the State of Merida, on June 22, of 2010, declares the Courts of Contentious Administrative, based in the city of Caracas, to continue learning about the affairs of the Communal Councils, since they are public entities of the decentralized administration:

Therefore, it is evident that the Communal Councils of Marras are, by legal qualification, a public entity of the Decentralized Administration, by virtue of being subsumed in the definition contained in article 184 numeral of the Constitution of the Bolivarian Republic of Venezuela and 2 of the Organic Law of the Communal Councils.

In correspondence to the aforementioned, on the fact that the Communal Councils are considered public entities of the decentralized administration, is the appreciation of González (2012), who expresses that,

effectively the Constitution in its article 184, establishes the creation of mechanisms for decentralization, where the Municipalities and States transfer certain powers to the organized communities, being this precept the one that was taken as the basis for the creation of the Communal Councils. (p. 49)

On the other hand, González (2012) presents arguments in relation to some ambiguities for the interpretation of the legislation in this regard, in this sense, he mentions,

the lack of legal identification since the law does not provide, if they are indeed organs or entities; the various decisions issued by the TSJ in analysis of the constitutional precept and the characteristics of the Law of the Communal Councils (2006) and the Organic Law of the Communal Councils (2009), were determined to be entities. (p. 49)

This position of the author is pertinent based on what is expressed in the Decree with Rank, Value and Force of Organic Law of Public Administration of 2014, given that, in its content, the guidelines for the creation of entities and its basic characteristics, which do not agree with the guidelines of the Communal Councils, as evidenced in article 16, on the requirements for the creation of administrative bodies and entities:

1. Determination of its subjective configuration, organizational form and location in the structure of the respective Public Administration.
2. Express indication of its purpose and powers, determination of its organizational form, its location in the structure of the Public Administration and its functional and administrative affiliation.
3. Forecast of the items and budget allocations necessary for its organization, operation or organizational reforms.

It is evident that the registration procedure of the Communal Councils does not agree with that of the public entities of the decentralized administration, expressed in the aforementioned Decree Law and, in other articles, related to the Communal Councils, in which it mentions the entities of the Administration and, on the other hand, refers to the Communal Councils; similarly, in the LOCC, in the development of its articles, it does not expressly mention that they are entities of the public administration.

Although, the First Court of Administrative Litigation decided that the Communal Councils are public entities of the decentralized administration, based on article 184, number 6 of the CRBV, and article 2 of the LOCC, it is considered that these articles do not support the position of the legislator, when classifying them as “public entities of decentralized administration,” but rather arguing the essence of this new form of community organization, which is intended to meet the demands and needs of the inhabitants of a given community.

As a basis for community nature, it must be clear the definition of community councils and, the purpose for which they were created, that is, as a form of organization from the base of society, to intervene in politics and management public and community. In this regard, Morales, Núñez and Hernández (2012), assume the communal councils as:

The main tool of the participatory democracy system; they are inclusive, plural and transparent instances of popular power, capable of originating a broad and critical citizen movement, which generally require that citizens become active political subjects, competent, in any case, to intervene from their individual sphere, in all matters that in one way or another affect them, which involves relearning to look, act and think and, why not, to communicate, becoming a subject and object of the participatory process, a fundamental condition for their quality as a political subject active. (p. 260)

Another fundamental aspect of the Communal Councils is the term participation, which has been oriented from different conceptions, which cover the political, social and community level. One of them, to which reference is usually made when speaking of participation, is that linked to the inclusion of citizens in decision-making processes in public management, in such a way as to directly or indirectly influence public politics and in the community (López, 2001); while Ceballos (2009) defines participation from the subject:

Citizen participation is understood as a continuous and dynamic social process, through which the members of a community through established mechanisms and legitimate organizations in which all members of the community are represented, since it is difficult to dialogue with all and each of the members, decide, contribute and participate in the realization of the common good. (p. 45)

In summary, the nature of the Communal Councils is mixed, constitutional and communal, based on articles 184 of CRBV, and article 2 of the LOCC, due because they constitute a basic form of organization of society, which fosters the political and social conditions for people to participate in the management of public policies (formulation, execution, control and evaluation), in favor of community development with equity and social justice.

Hence, the Communal Councils are legally established as an organizational form of Venezuelan society, based on the new conception of the State, which is responsible for the relevance of citizens to participate in the public policies of the Nation, thus, that the main engine of this form of community organization, that is, the people, who must exercise their right and duties in public management with incidence in the community, through the Communal Councils, as an essential instance of society.

## Conclusions

For the fulfillment of the competences and demands of the citizens, the Venezuelan State uses different means of administrative and community activity, for which it requires a set of territorial public entities; as well as private law entities whose purpose is to carry out activities of public interest.

The approval of the CRBV constitutes the essential legal basis for the creation and formal conformation of new instances of organization of society, for participation in politics and public management; being one of them the Communal Councils, as a political-administrative instance of community participation in order to intervene directly in matters of collective interest, both in public and community management for community development.

The Communal Councils, based on the constitutional precepts of 1999, constitute instances of participation of organized communities to intervene in public and community affairs; however, since its formal creation in 2006, progress has been evidenced in legal and administrative decisions regarding the legal nature that supports compliance with its powers, expanded in the LOCC of 2009.

The legal nature of the Communal Councils is categorized as mixed, given their constitutional and community foundations, according to constitutional precepts, as well as those provided

for in the LOCC, which establish the legal character of these Councils, as the essential form of organization of Venezuelan society, which fosters political, administrative and social conditions, so that citizens participate in the management of public policies (formulation, execution, control and evaluation), in favor of a community development with equity and social justice.

The Communal Councils are a mixture, because they are organizations that are created for the organization of citizens and the community, to solve the needs and demands in the communities, therefore, they are born from the will of the citizens, that is, a private character. While, the State gives them a public character, in the obligation to comply with the principle of efficiency in the allocation and use of public resources; non-returnable, donation, assignment or award.

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