


EDITORIAL

Challenges of the labor regime as public employees at the *Instituto Nacional de Cancerología* in Colombia

Los retos del régimen laboral como empleados públicos en el Instituto Nacional de Cancerología de Colombia

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Scientific evidence has shown that university hospitals (or academic medical centers), with a high volume of new patients, research and academic programs to expand the healthcare workforce, deliver higher-quality care and achieve better clinical outcomes (1). Teaching requires a greater time commitment per activity, so clinical productivity in these centers is lower than in non-academic centers. Similarly, industry-independent research does not generate as many financial incentives as clinical activity (2); however, teaching and research are considered invaluable non-monetary incentives due to the intense and rewarding social interactions they foster. For this reason, university hospitals require not only highly specialized medical professionals but also full-time scientists with doctoral degrees. Specifically, the accreditation board of the Organisation of European Cancer Institutes states that in addition to cancer care, Comprehensive Cancer Centers should develop human talent, conduct research and innovation, and work within a network to promote cancer prevention and early detection of premalignant lesions (3).

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The *Instituto Nacional de Cancerología* (INC) is a national public entity in Colombia, affiliated with the Ministry of Health and Social Protection (hereinafter, the Ministry of Health), with a 91-year history. During this time, it has had to overcome numerous challenges and conflicts, particularly regarding the remuneration of its human resources, as described in the book published for its last anniversary (4). During 2016-2018, the need for institutional transformation became evident to Colombian society. This transformation would allow the INC to improve the remuneration of specialists and doctoral degree holders to meet national and international quality standards (5). At the INC, human resources hiring is carried out in accordance with public employment regulations, as is the case

for all state employees. To increase their income, specialized or highly professional staff work in the private sector in a complementary capacity. In this regard, the INC had been analyzing the advantages of having permanent public employees transition to private-sector employment contracts.

Public employment in Colombia was established at the beginning of the 20th century as a system for managing state personnel, aimed at guaranteeing the efficiency of public administration and ensuring job stability and equal opportunities in access to and advancement within the public service (6). It is a highly regulated system because the appointing authority does not exercise discretionary power over the hiring or dismissal of public servants but must adhere to the grounds established by law. The *Departamento Administrativo de la Función Pública* (DAFP; Administrative Department of Public Service) oversees it and issues rules governing the civil service, which allow access to job stability through a public, merit-based competition administered by the *Comisión Nacional del Servicio Civil* (CNSC; National Civil Service Commission). This competition does not take into account the specifics of institutional functions; rather, recognition is based on knowledge and the application of fundamental competencies aligned with the state's structure and dynamics.

The need to review a special labor regime for the healthcare sector gained prominence during the COVID-19 pandemic, which highlighted the difficulties faced by healthcare workers as public employees. In this context, in September 2021, members of the House of Representatives Jairo Giovany Crisanchó Tarache, Jairo Humberto Cristo Correa (both from the Radical Change Party), and Jorge Alberto Gómez Gallego (from the Dignity Party) introduced a new bill aimed at achieving this transformation, which was quickly approved. It passed its first two readings in the House of Representatives and then moved to the Senate of the Republic for its remaining two debates. The third debate took place in the Seventh Constitutional Standing Committee on June 13, 2022, with a report presented by Senators Aydeé Lizarazo Cubillos, Laura Ester Fortich Sánchez, Nadia Georgette Blel Scaff, and Manuel Bitervo Palchucan Chingal, who sought its approval. Finally, in the fourth debate during the Senate plenary session on September 23, 2022, the report presented by Senators Nadia Georgette Blel Scaff and Edwing Fabián Díaz Plata established the definitive wording, securing the bill's final approval.

In this context, given the existence of bills aimed at reforming the labor regime at the INC, the CNSC did not open the competition to fill the vacant positions, as it was aware of the ongoing legislative process and its implications, which, as far as the INC management knew, had the necessary endorsement.

On February 17, 2023, the new president of the Republic, Gustavo Petro Urrego, enacted the law that transformed the judicial nature, structure, and legal regime of the INC (7). Three months later, on May 19, 2023, the new National Development Plan 2022-2026—"Colombia, a World Power for Life"—was issued, incorporating a policy of productive inclusion with decent work and support for entrepreneurship, the formalization of public employment with equity, the strengthening of national enterprises, and mission-oriented research and innovation policies (8). In this context, the necessary regulatory and public policy conditions were established to advance the implementation of the INC's transformation in the same year the law was enacted.

Concurrently, in November 2023, the process for the acquisition and recovery of the infrastructure of the *Hospital San Juan de Dios* and the *Instituto Materno Infantil* was defined, establishing both as special entities (9). This also required a labor regime similar to that approved for the INC, but applicable exclusively to personnel performing functions related to the provision of health services under private employment contracts. Meanwhile, the other employees of the *Hospital San Juan de Dios* and the *Instituto Materno Infantil* were recognized as administrative civil servants, governed by relevant and supplementary regulations (6).

Likewise, in November 2023, a joint memo was published in which the national government established guidelines for sectoral organizational redesign and the formalization of public-sector employment with an equity focus. The memo defined a pathway that all entities undertaking labor formalization processes had to follow, regardless of whether a specific applicable law existed, as in the case of the INC (Memo 100-011 of 2023) (10). This pathway included obtaining technical, financial, and legal feasibility from the Administrative Department of the Presidency of the Republic, the Ministry of Finance and Public Credit, the DAFP, the Ministry of Health, and the National Planning Department.

In this context, unlike the swift legislative approval of the law, the process of implementation of the INC's transformation required adherence to this institutional pathway. Consequently, the INC had to request feasibility for its transformation from the Ministry of Health, the sector's head, and submitted four requests. Once this stage was completed, the documents were submitted to the DAFP, which granted approval after eight requests. Frequent staff turnover in both entities led to reprocessing and the need to provide additional explanations. Undoubtedly, one of the greatest challenges was securing budgetary feasibility from the Ministry of Finance and Public Credit, for which ten requests were submitted before approval was granted. Finally, the last step was the Administrative Department of the Presidency of the Republic, where seven official letters were submitted to obtain feasibility and approval of the decrees.

On September 6, 2024, the CNSC, through its special attorney, lawyer Álvaro Namén Vargas, filed suit against the following articles:

- 7: related to the functions of the Board of Directors under subsections k), l), and m).
- 9: concerning the functions of the Director General in sections 13 and 14.
- 14: pertaining to the labor regime as a whole.
- 18: transitory (partial).

As well as “other rules that form a unity of subject matter with those mentioned,” in Law 2291 of 2023: “by means of which the legal nature of the *Instituto Nacional de Cancerología* State Social Company is transformed, its object, functions, structure, and legal regime are defined” (7). This claim was admitted by the Constitutional Court and was processed according to regulatory conformity (11).

In response to this claim, the INC, through a legal representative, filed a motion to intervene to defend the constitutionality of the regulations (the provisions allegedly infringed or violated by the cited regulations were: the preamble and articles 1, 2, 13, 25, 40.7, 53, 54, 55, 125, 130, 150, and 209 of the Political Constitution); however, by Judgment C-100 of March 20, 2025 (12), the Plenary Chamber of the Constitutional Court declared unconstitutional the provisions conferred by the law of institutional transformation (7) related to the private labor regime, specifically: A) subsections k), l), and m)

of article 7; and B) the entirety of Article 14 of Law 2291 of 2023. In that ruling (12), the Court addressed the plaintiff's first claim and declined to rule on the remaining claims due to mootness, in accordance with the considerations set forth in the aforementioned ruling. Likewise, it developed a line of reasoning aimed at protecting the rights of administrative civil servants, as follows:

- 1) Failure to observe constitutional limits on the creation of the special labor regime for the INC.
- 2) Restricted competence on the part of the Legislator to adopt a labor regime based on employment contracts, because, as stated, “there is a limited margin for the legislator to exceptionally create career regimes, and it will only be possible to establish regimes of free appointment and removal or special regimes that make career guarantees more flexible when there is sufficient reason for it.”
- 3) The INC's *sui generis* status was not determined because other centers of the INC's nature exist (such as the *Centro Ambulatorio Dermatológico Federico Lleras Acosta*), and for the following reasons: 53% of the staff do not perform specialized functions. There are no functions incompatible with the administrative career track. The positions of free appointment and removal are not individualized or identified. The unsuitability of a specific career system was not demonstrated at the INC. The INC's difficulty in retaining staff was not proven. There is no justification regarding the competitiveness of salaries, given that some positions at the INC have higher remuneration than in the rest of the public sector. Outsourcing is not grounds for excluding civil service career positions.
- 4) The special regime of the INC was deemed regressive and less protective because it resulted in the loss of job stability guarantees: the right to choose, the right to compensation for not being incorporated into another career job, and certainty of the grounds for retirement, loss of the rights to be promoted for outstanding performance evaluation, limits on the working day, and the right to rest.

Consequently, as an adverse effect of the aforementioned ruling, the INC took the necessary steps to align its institutional organization with the current legal framework. In this regard, it requested the establishment of the entity's workforce in accordance with its internal and functional structure, to be filled through a merit-based competition conducted by the CNSC. Similarly, it found it necessary to contract the services required to guarantee the continuity and effective delivery of its core functions. Additionally, a decree was sought to establish a special salary bonus for INC specialist physicians treating cancer patients,

to incentivize their retention and dedication to specialized cancer care.

Furthermore, the unconstitutionality of the aforementioned articles of Law 2291 of 2023 forced the INC to update all submitted documentation until, finally, on January 15, 2026, the regulatory decrees (Decreets 0021 and 0022 of January 25, 2026) regarding staffing, structure, and the special bonus for medical specialists were published (13-14). As a consequence of these decrees, the Cancer Patient Care Center, the Public Health Center for Cancer Control, the Research, Development, and Innovation Center, and the Human Talent Training Center were created to advance its mission, and the Corporate Deputy Management and the Human Talent Deputy Management were established, consolidating a new institutional organization. Likewise, the staff was expanded from 777 to 1,713 positions, allowing the formalization of employment for 669 people who had been hired through outsourced companies, as well as the creation of 267 jobs; however, the employees who currently occupy these positions, mostly in a provisional capacity, must participate in a public merit-based competition in order to continue being linked to the INC.

In conclusion, the transformation of the INC, from the drafting of the bill onward, demonstrated a process marked by broad political and multi-party convergence, in which members of Congress from different parties and ideological orientations united around a common purpose: to strengthen and modernize the INC institutionally as a strategic state entity, with a new labor regime that would allow hiring through a private-sector contract, which is more flexible than public-sector employment. It is somewhat paradoxical that one of the state entities itself demanded this achievement, since it was widely recognized that the fight against cancer, facing present and future challenges, requires robust institutional capacities, technical leadership, and a specialized labor regime aligned with the demands of the 21st century. Thus, this legislative consensus reflected a shared understanding that strengthening the INC does not serve short-term or sectoral interests, but rather a collective responsibility that transcends partisan divisions and is part of an urgent national need to strengthen high specialization in oncology, as well as to promote research with scientists who have the possibility of full-time dedication and a doctoral degree, which will surely have to be resumed in the future.

The law marked a significant step forward, particularly by expanding staffing and establishing a new organizational structure focused on research, innovation, and public health in cancer. However, the subsequent lawsuit filed by the CNSC introduced tensions and paradoxes that are difficult to ignore. Furthermore, it is contradictory that a special labor regime was deemed constitutional for professionals at the *Hospital San Juan de Dios* and the *Instituto Materno Infantil* but unconstitutional for the INC. Similarly, it is concerning that a leading institution in cancer research, training, and innovation, which has trained highly qualified personnel for decades, lacks a framework that would allow it to fully recognize doctoral degrees or degrees in second medical and surgical specialties for which it itself provides training.

These tensions underscore that the transformation of the INC is not merely a regulatory or administrative matter but a fundamental debate about the place of science, innovation, and cancer control within the Colombian state's priorities. The remaining challenge is to ensure that the legal framework supports, rather than limits, the development of capacities and the strengthening of human talent in the public sector, especially in core areas, to further consolidate the INC in line with international quality standards. In this regard, it is worth noting that in the UK's Global Top 250 Hospital 2026 Brand Finance ranking, the INC was ranked alongside six other Colombian entities (four private and two public) in the group with the best reputation (15). It is therefore necessary to ask what structural conditions account for the differences in the scores obtained by public and private entities in Colombia.

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