

Jurisprudence Change of the Council of State concerning the Expiration for Public Damages from Infringements against Humanity. An Economical Incidence Analysis in Casanare Department

El cambio de jurisprudencia del Consejo de Estado, respecto de la caducidad para casos de delitos de lesa humanidad, análisis de la incidencia económica en el departamento de Casanare

A alteração da jurisprudência do Conselho de Estado relativamente à expiração do estatuto de limitações em casos de crimes contra a humanidade, análise do impacto económico no departamento de Casanare

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Abstract

Objective: This academic article originated from the need to make a deep analysis and a subsequent criticism of the jurisprudential change, the one that is effectuated by the Honorable Council of State (Expiration for public damages derived from crimes against humanity - Petition Control for Direct Reparation, 2020). **Conclusions:** In whose unification judgment changed the governmental regulations, and determined that victims from the so-called False Positives have a precise term of two years to sue the National Government in Integral Reparation Searching. That is why it takes an initial reference by mere suspicion in what facts were immersed in national government forces.

Keywords: False positive; Council of State; Paramilitaries; Protected person; Expiration; Victims.

Resumen

Objetivo: Este artículo académico nace de la necesidad de realizar un análisis profundo y una posterior crítica al cambio jurisprudencial efectuado por el Honorable Consejo de Estado (Caducidad por daños derivados de delitos de lesa humanidad - medio de control de reparación directa, 2020), **Conclusiones:** cuya sentencia de unificación cambió las reglas, y determinó que las víctimas de los mal llamados *falsos positivos* tienen un término preciso de dos (02) años para demandar al Estado en búsqueda de reparación integral, tomando como referencia inicial la mera sospecha de que en el hecho estuvieron inmersas las fuerzas del Estado.

Palabras clave: Falso Positivo; Consejo de Estado; Paramilitares; Persona protegida; Caducidad; Víctimas.

Resumo

Objetivo: Este artigo acadêmico surge da necessidade de efetuar uma análise aprofundada e subsequente crítica da alteração jurisprudencial feita pelo Honorable Conselho de Estado (Caducidad por danos derivados de delitos de lesa humanidad - medio de control de reparación directa, 2020), **Conclusões:** cuja decisão de unificação alterou as regras, e determinou que as vítimas dos chamados *falsos positivos* têm um prazo preciso de dois (02) anos para processar o Estado em busca de uma reparação integral, tomando como referência inicial a mera suspeita de que as forças do Estado estavam envolvidas no acto.

Palavras-chave: Falso Positivo; Conselho de Estado; Paramilitares; Pessoa protegida; Caducidad; Víctimas.

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INTRODUCTION

The 1991 Political Constitution, which replaced the Constitution, in its first article proclaims that Colombia is:

A social state under the rule of law, organized as a unitary, decentralized, democratic, participatory and pluralistic Republic, with autonomy of its territorial entities, founded on respect for human dignity, on the work and solidarity of its members and on the prevalence of the general interest (Political Constitution of Colombia, art. 90, 1991).

In accordance with the foregoing, it can be inferred that as of 1991 the Colombian State will have to promote the welfare of all the inhabitants of the territory, in addition to the fact that it will have to respond directly for the actions of its officials.

Now, the process of direct reparation finds its genesis in Article 90 of the Political Constitution, which reads as follows: "The State shall be liable in patrimonial terms for the antijudicial damages attributable to it, caused by the action or omission of the public authorities" (Political Constitution of Colombia, art. 90, 1991).

Corollary to the above, it is essential to take into account in the processes of direct reparation, the importance of comprehensive reparation of the victims of the armed conflict in Colombia, thus, according to Professors Hugo Alejandro Sánchez Hernández and Mauricio Antonio Torres Guarnizo (2018), the damage should not only aim at returning the damage caused to the previous state, but should also compensate all the immaterial legal assets of the victims.

The main objective of this paper is to outline in the first place whether there is any correlation between the change in the jurisprudence of the H. Council of State with respect to the issue of the expiration of the Colombian State's non-contractual liability with respect to the issue of extrajudicial disappearances, the already known *false positives*; This is a delicate issue in contentious administrative matters, since it implies on the one hand that the Colombian State has a legal responsibility for the extrajudicial executions wrongly called *false positives* executed by members of the public forces, on the occasion of military or police operations, carrying out detentions against the will of the victims, kidnappings and later, as colloquially called "killing" innocent people outside the armed conflict, as these deaths are "*casualties resulting from combat*". These facts, which have been determined as a worldwide phenomenon due to the violation of human rights through which the international community has conducted studies and has highlighted the failure of the State in terms of the neglect of its commitments to protect the fundamental rights of all Colombians and people living in the territory as established in the current Political Constitution (Borbón, 2019; Ortega and García, 2019).

In this paper, two central themes were developed, a first axis that relates the *false positives* in the history of the armed conflict, for which the concept is defined and its relationship with the violence in Colombia propitiated by the State itself; The second axis examines, based on data obtained by the Special Jurisdiction for Peace, the number of Colombians who are victims of extrajudicial disappearances in protected persons, in order to determine the economic incidence that represents to a large extent the approximate number of sentences that the Contentious Jurisdiction would have to pass.

REFLECTION ARTICLE

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In this regard, Dr. Corina Duque Ayala spoke about this change in jurisprudence as follows: "The victims, before the last precedent, did not have a statute of limitations because they were crimes against humanity, but today with the change of the unified judgment, they would be without full reparation as a result of the application of the statute of limitations:

With this change of position, national and international precedents are openly disregarded, regarding the NO expiration of the facts that involve crimes against humanity, which leaves the victims of the armed conflict, especially those who were subjected to extrajudicial executions by the State, totally unprotected. (Duque Ayala, 2019, pp. 91-92).

THEORETICAL FRAMEWORK

1. HISTORY AND DEVELOPMENT OF VIOLENCE, ARMED CONFLICT AND "FALSE POSITIVES" IN COLOMBIA

1.1. *Armed conflict in Colombia*

In the recent history of the country, there was an important event in which the creation of political and social agreements was proposed as a goal, which would allow the end of the armed conflicts that had plagued the country (Zuleta, 2019; Morón, 2017); Thus, the last attempt of the nation to put an end to the armed conflict took place through the peace agreement between the national government of then President Juan Manuel Santos and the Revolutionary Armed Forces of Colombia (FARC), where through a delegation between both parties, an agreement was signed where both parties considered several critical points within the conflict, among which were the active participation in politics by members of the extinct FARC, the development of agriculture for the members with the help of the government, the issue of ending illegal drug trafficking, the reparation to the victims of the conflict, the latter delivering the goods to achieve such reparation, said end of the armed conflict in Colombia with that guerrilla has been a milestone at national and international level, so much so that this agreement is determined as "a process of recognition of the crimes and offenses committed, where there is a solid component of reparation to the victims, who, on many occasions, yearn more for the truth and the establishment of guarantees of non-repetition" (Sánchez and Torres, 2018, p.86).

Corollary to the above, in order to safeguard the life and dignity of the actors in the conflict and the victims outside it, Velandia Vega and Sánchez Acevedo (2020) assert that within the peace process there must be "the promotion of a culture of peace and reconciliation is a fundamental axis for building peace in Colombia, a country facing a particularly complex internal armed conflict" (p. 140), which makes it possible to infer that this peace process should be a mechanism for the whole of Colombian society in the pursuit of our own well-being. 140), which allows us to infer that this peace process should be an engagement of the entire Colombian society in pursuit of our own well-being.

As Buitrago Valderrama (2019) points out, Law 1448 of 2011 turns out to be a fundamental gear of the transitional policy, since it grants victims full recognition, accepts the existence of the armed conflict and seeks to make the comprehensive reparation of victims a reality "in legal, economic and administrative terms within the framework of the Colombian social rule of law" (Buitrago Valderrama, 2019).



In the research carried out by Fajardo Sánchez and Rodríguez Bejarano (2010), they point out that, for the Inter-American Human Rights System, integral reparation has been defined as:

Reparation of the damage caused by a breach of one of the international obligations consists of full restitution, which includes a reestablishment of the previous situation and reparation of the consequences that the breach produced and the payment of compensation as compensation for pecuniary and non-pecuniary damages including moral damage (Fajardo Sánchez and Rodríguez Bejarano, 2016, p.8).

Regarding the peace agreement, which as has been said was a great achievement on the part of the national government, it generated a lot of uncertainty in the country, because, although a comparison can be made with other peace agreements between governments and military forces outside the law as in the African case (Parra et al., 2015); the truth is that no peace process resembles another, because, due to the cultural differences that exist, one could not compare one with the other, so much so that in the Colombian case it was determined that:

There are no common standards that can be used in emerging processes, so the tools that are consolidated from the law present an opportunity for effective management of massive violations of human rights and the timely linkage of rights such as economic, social, cultural and environmental rights (Desca) (Fonseca-Ortiz and Sierra Zamora, 2022).

Our nation since its creation has been immersed in endless wars without quarter, initially against the Spanish hegemony developed between the years 1810 to 1819, which led to the creation of the New Granada, which ended in the separation of several territories to become the nation we have now, but social discontent, economic and political of some social classes raised a number of quarrels that ended in the death of many people, from the bipartisan war between the liberal party and the conservative party, to the creation of the FARC, economic and political discontent of some social classes gave rise to endless quarrels that ended in the death of many people, from the bipartisan war between the liberal and conservative parties, to the creation of the FARC, the ELN, and now the bacrim, in this regard Dr. Fajardo Sanchez (2016) argued that "for almost eight decades several regions of the country have suffered serious human rights violations and breaches of IHL. Thousands of peasants, union leaders and political leaders have been murdered, disappeared, displaced, forced into exile, etc., but who are the perpetrators of these violations?" (Fajardo Sanchez, 2016).

The war in the nation has undergone a series of transformations by the same actors of the conflict, for Medina Gallego, the conflicts are inscribed:

During this period, the dynamics of the conflict have revolved around the growth and deepening of irregular confrontations between the various armed actors and the institutions; the dispute for territorial and population control; the growing articulation of illegal drug trafficking economies to the development of the war; the insertion and influence of illegal actors in the institutional, economic and political fields - local, regional and national; the transformation of law enforcement entities, combat strategies and war logics; the systematic involvement of the civilian population in security and defense tasks oriented by the State and the growing internationalization of the conflict within the framework of global security policies (Gallego, 2011, p. 34). 34)

On the other hand, because some political parties to the conflict did not heed the call of the government of the time to end the conflict, which occurred in the late 1950s, it was not possible for the government to take the necessary measures to end the conflict.



This resulted in military repression of the parties that did not accept the government's concession, as well as in the restructuring of partisan violence and the formal formation of guerrilla groups, which generated strong military harassment and exposed the rise of state violence.

Due to the number of actors that the country's armed conflict has provoked and brought together, among which are the traditional political parties, the armed illegal armed movements, paramilitaries and the serious influence of drug trafficking in the country, for which the Colombian people are internationally recognized, have had a predominance in our history, which has increased the conflict due to the social gap that exists in the Colombian population, which causes a series of social problems and the lack of state protection (Navarro et al., 2016).

The social problems of the country in recent years have been nurtured by the abysmal social differences between the ruling class and the lower social class, and ultimately by the little or no willingness on the part of the traditional political leaders on duty to reduce that social gap, which caused, as has been said, the creation of groups outside the law, which in principle wanted equality for all Colombians, but throughout their history, in order to be able to cover the huge expenses of maintaining a constant war against the national government, they make use of such reprehensible practices against the inherent human rights of all people, such as drug trafficking, kidnapping, extortion, etc., which ends up blurring the desire to change Colombian society for a more just and equitable one (Bueno, 2016; Juajibioy, 2019; Matias, 2019).

Corollary to the above, the illegal groups such as the FARC, ELN, BACRIM, among others, who with their illegal practices to capture money, such as kidnapping, drug trafficking and extortion, who with their heinous crimes left thousands of victims in their wake, which according to the national center of memory history the figure amounts to 262,197 deaths between 1958 and 2018, of which are attributable to the FARC-EP and other guerrilla groups.35.683 deaths (Romero, 2018), a number only surpassed by paramilitary groups, to whom 94,579 killings are attributed (Justicia, 2018).

A more grounded concept of one of the actors in the armed conflict was defined by author Manfredo Koessler as follows:

Contribution to the study of violence in Colombia from Pierre Bourdieu's field theory. In the face of conceptions that attribute to paramilitarism the responsibility of being one of the most important causes of violence in Colombia, whether as an instrument of the State or of the elites, this work analyzes the practices of paramilitarism as a consequence of a trajectory in the social space. This work seeks to answer the question: Why do the paramilitaries act as they do? in order to understand their strategies and practices in relation to their political actions (Koessler, 2015, p.221).

The different actors of the armed conflict in Colombia, including state authorities, with *false positives*, encouraged and increased the number of civilian victims, men and women, adolescents, boys and girls; This is how in Colombia thousands of young people between 2002 and 2008, were charmed with different pretexts by unscrupulous people to move them to places where the conflict between the military forces of the government and forces outside the law, with the aim of having casualties in combat, this macabre military action had its "boom" as a result of a systematic policy of the armed forces, sponsored by the government of the day, to confront the forces outside the law, and incidentally to fight.



The government created certain "incentives" for military combatants for each "positive" casualty in presumed combat (a way of naming a casualty and/or death in combat of a subversive agent).

This perverse practice developed by the military forces, took force as a result of the directive 029 of November 17, 2005, which regulated the economic recognition for the capture or killing of guerrillas, in this regard the Espectador newspaper which published in 2008, a report where as a result of the issuance of the aforementioned directive in order to give combat results a series of activities were carried out which ended in the so-called false positives, where he pointed out:

(...) Statistics from the Human Rights Unit of the Attorney General's Office show that, after the issuance of directive 029, the number of complaints rose from 73 in 2005 to 122 in 2006 and 245 in 2007. Although rewards for the death of guerrillas cannot, in principle, be given to active members of the public force, they could have led to alliances between criminal groups and the military in order to collect the rewards (on the one hand) and show better results (on the other). These criminal alliances may explain some of the disappearances that today scandalize the country and the whole world. In sum, it is possible that the rewards (and the same incentives that operate within the Armed Forces) have led to criminal alliances dedicated to the fabrication of corpses (...) (Opinion, 2008, para 5).

The economic rewards given to the armed forces were not the only motive that drove them to commit such crimes against humanity with the disappearance and murder of protected persons, military promotions and the great pressure from the national government in the boom years of this criminal practice (2002-2010), led to an increase in orders from senior commanders to carry out these acts, many military personnel stated that they were only following orders, and due to the indoctrination they received in the forces, they complied under penalty of receiving sanctions.

In this regard, the monetary rewards given to the armed forces was not the only reason for the systematic development of the murder of protected persons, but the political situation of the country required to show results to the common people, which resulted in an excellent evaluation of the military to request promotions and continue in the force, in this regard, Professor Bolaños, determined that:

Indoctrination, understood as the academic exercise for the set of ideas and teachings of basic principles of an organization or institution to guide, according to interests, the worldview of individuals, which permeated the military and police training schools. (Bolaños, 2020, p. 154).

In that order of ideas, there coexisted different modalities in which the public forces used to execute the so-called false positives, in a first scenario:

I) False Positive Military

It falsely and deceptively presents to the media the deaths of individuals who are not part of the conflict, or members of illegal groups.

II) False Positive by Paramilitaries by order of government officials

As their name indicates, these murders were perpetrated by civilian agents and organized systematically.



They are organized to commit crimes, with the help of state agents, and they pass them off as combat casualties.

1.2. *Enforced Disappearance or False Positives in Colombia*

To understand the practice of forced disappearances in the Latin American region, which is not only used by the Colombian state, different countries in the region have used this practice since the Cold War era, remembered between 1947 and 1991; As in Argentina during the dictatorship of Juan Domingo Perón, in Chile with Augusto Pinochet, the states disappeared people outside the conflict, they were very brutal times in the history of both South American countries, where the crimes committed by state officials in which through multiple selective killings and forced displacements wanted to subjugate the population to continue in their respective dictatorships, Omar Huertas and Christian Benitez in their article "Analysis of the elements of transitional justice in the context of constitutional democracy", determined that "unfortunately our Latin American history was characterized by the multiplication of authoritarian regimes, either as full dictatorships or as simulated democracies." (Huertas Díaz and Benítez Núñez, 2021, p.3).

In the Colombian case, the Inter-American Court of Human Rights, through the first ruling against the Nation on the issue of the so-called "False Positives", determined the following:

According to the Commission, these deaths would have occurred at the hands of State security agents and would have taken place in the context known as "false positives", which consists of extrajudicial executions in the context of the Colombian armed conflict, with a modus operandi characterized by the death of civilians subsequently presented as members of illegal armed groups killed in combat, through various mechanisms of distortion of the crime scene and the circumstances of manner, time and place in which the events occurred. (Inter-American Court of Human Rights, 2018, p. 4.)

It is worth noting that in the aforementioned ruling, the international community identified the modalities of the so-called *false positives*, in which it determined that the public forces carried out systematic killings of civilians, making them appear to be legitimate combat casualties of agents of the margin of the law, this practice began in the 1980s, where the executions were characterized by the alteration of crime scenes and indicated that these killings by members of the armed forces took place in combat, coupled with the fact that they were operating in conjunction with paramilitaries and civilians, aiming to present the most vulnerable young civilian population throughout Colombia as combat casualties, and repeatedly carried out arrests, arbitrary acts, torture and other forms of ill-treatment by the armed forces.

Thus, we observe that the false positives known as extrajudicial and illegal executions of civilians were actively carried out by the Colombian military, such as the National Army and the National Police, who were apparently in the service of the community, but since in combat, lawful casualties of guerrillas or criminals are made, civilians subjected to extrajudicial executions are represented as guerrillas killed in combat, chains of custody are broken, and crime scenes are manipulated and contaminated. These crimes are perpetrated by the armed forces, which often operate alongside paramilitaries and civilians, and also attack civilians in several regions of Colombia, and in many cases the victims are arbitrarily detained, tortured and mistreated before the selective killing.

Clearly, executions in protected persons carried out by state agents in an extrajudicial manner, these crimes are recognized as extrajudicial executions, a concept that includes in accordance with the provisions of the Constitutional Court as:

The arbitrary deprivation of life by agents of the State, with its complicity, tolerance or acquiescence and without the existence of a judicial or legal process that authorizes it. It is clearly a violation of the right to life that is possible to perpetrate in the exercise of the power of the state agent, in isolation, with or without political purposes, or worse as an action of institutional origin." (Sentence T-535/15, 2015)

In addition, in the executions of protected persons by state agents, or through particular (paramilitaries), there was never an order from a judge to do so, simply on a whim to try to present military achievements to the Colombian population and the national government, fundamental rights were violated, carrying out these acts systematically, and carrying out schemes to cover up such atrocious acts.

In addition, extrajudicial executions are carried out with the arbitrary deprivation of persons protected by international law and who in most cases are deprived of their lives by State agents, or with their consent or participation, which constitutes a serious violation of international humanitarian law and fundamental rights.

The second form of extrajudicial execution occurs after the victims are taken from their homes, and are subsequently identified by informants, sometimes anonymously, as belonging to illegal armed groups in search of economic rewards. Similarly, the Constitutional Court ruled on this issue regarding the atrocious actions of some members of the military forces as follows: after committing the murder, members of the security forces stage the scene to make it look like a legitimate combat action. (Decision T-535/15, 2015).

As has already been pointed out throughout this document, according to doctrine and jurisprudence, there are two types of extrajudicial executions, the first is mercenary, characterized by civilians or demobilized or former soldiers of armed groups, who try to defraud civilian victims, Another form occurs when the victims are abruptly taken away from their jobs or residences, or when checkpoints are set up or informants are instructed to join a rebel group, with prior agreement to receive a reward.

Much has been said about violence in Colombia, as well as academic and scientific research on the subject. For the sake of analysis, it is necessary to reproduce parts of the concepts that some scholars have applied to the problem of false positives

In this order of ideas, in accordance with the provisions of Dr. Rodriguez, she established that:

Violence has a social role from the point of view of the conformation and structure of society: It is an instrument that represents a source of opportunities to move and socially rearrange, it leaves aside its distorting or disturbing character for when it is regulated normatively and institutionally, it appears as a social, political and legal practice justified and highly profitable for the interests of those who execute it, and the worst of the case, already recognized, it does not avoid at all other forms of democratic manifestation, even if it sounds somewhat ironic and out of sense, because with its use it reaches power.

and the oppressors of a certain government regime are repressed (Ortíz, 2012).

According to the previous paragraph, violence is not an isolated act, but an individual process with its motives and intentions, whose actors play contingent and determining roles, some of which are excessive and unrestricted, and it is here where its unnecessary character stands out, arbitrary and capricious individual and collective actions of the actors in the conflict, where violence is disproportionate and intensified, coupled with the practice of giving false information which has no clear strategic or ideological purpose in nature, but focuses on the undue fate or achievements of the parties to the conflict.

2. STATE RESPONSIBILITY FOR EXTRAJUDICIAL DISAPPEARANCES, FROM THE POINT OF VIEW OF DIRECT REPARATION

2.1. *Direct Repair*

The jurisprudence on this type of control has created figures such as failures in service as indications of omissions on the part of the State in the matters it must comply with or failures that lead to anti-juridical damage (Vargas, 2018). Crimes against humanity, genocide and war crimes, as stipulated by the Supreme Court and the Constitutional Court, as well as the Rome Statute, other conventions and domestic legal systems, have a special characteristic: they are not subject to statute of limitations. In other words, the State has the power and obligation to investigate them without time limit.

The foregoing suggests that, due to the lack of regulation of administrative contentious matters, it is doubtful that the statute of limitations for criminal action for these crimes can be extended until the expiration of the means of control of direct reparation in Colombia, if in accordance with Article 93 of the Political Constitution, the administrative contentious judges must find a rule for the computation of the different statute of limitations periods for serious violations of international humanitarian law, prioritizing the importance and international sanctification of those rights, the victims' access to justice, and the principles of humanity.

As a result, lawyers, courts and tribunals have been arguing over the enforceability of the term of prosecution when crimes against humanity, genocide or war crimes are invoked for several years. Moreover, even the Council of State, the closing body in the contentious-administrative jurisdictions, does not have a uniform standard for determining the duration of direct reparation proceedings for the crimes indicated. As a result, two main positions were created within the Council of State: one unified in 2014 to try to justify not providing that the right reparations expire in the face of these serious human rights violations, and another in 2020 through which it determined in a categorical manner the expiration of two (02) years to file the claim for direct reparation for the disappearance and murder of a protected person, since it is known that in that murder was immersed a wrongdoing by state agents.

In short, the High Court of the Contentious-Administrative jurisdiction recognizes that crimes derived from serious violations of human rights have the same consideration as other crimes in administrative proceedings, so that direct reparation proceedings have the same duration as any other fact. Country: Two years.



However, contrary to what one might think, the legal debate on the expiration in these processes did not end there, since to a large extent this jurisprudential change was taken as "a legal setback for the rights of the victims of serious human rights violations, war crimes and crimes against humanity" (Mora, 2017, p.20).

REFLECTION

In this context, the understanding that the discussion continues and it is a fact that Colombia is a country where crimes against humanity are committed on a large scale and systematically; violence, war, impunity, judicial inefficiency, corruption, the practice of armed groups, violence and discrimination against minorities make us one of the most violators of IHL in the world, and the analysis of the content of this jurisprudence makes sense in this academic article. This does not forget that, unlike common crimes, all these serious violations of human rights and IHL, in many cases, involve state agents who exploit their positions of power. The facts remain unpunished and forgotten.

It is time to reaffirm the obligation of the Colombian State to respond when it is involved in these serious human rights violations, and that it must above all guarantee victims the fundamental right to truth and justice, which according to Dr. Estefanía Acosta Páez "the right to truth has a dual nature, which in turn implies a dual ownership that must be protected" (Acosta Páez, 2020). Reparations, including guarantees of non-repetition, are therefore important to study the concept of forfeiture and how it operates in lawsuits aimed at declaring the State's responsibility, since it seems to be a barrier to comprehensive reparations for victims as a limited judicial remedy.

In other words, establishing such a short legal term (because it is only two years) could seriously affect the victims of this type of crime in our country, which, as has already been said, has a long history of abuses. According to the Inter-American Court of Human Rights, in the face of acts against humanity that constitute serious human rights violations, such as crimes against humanity, war crimes or genocide, there must be strict monitoring of those who hinder the victims. These violations may have recourse to judicial or administrative redress mechanisms.

2.2. *Economic impact of "false positives" in Colombia*

In 2020, Colombia would have faced claims for an estimated value of 397 billion pesos so far due to 362,000 judicial processes, with plaintiffs exceeding the annual State budget by 150 billion pesos, according to data obtained from the National Legal Defense Agency; of that figure, according to the journalistic investigation it was determined that: "the value of the claims is concentrated in processes for direct reparation (39%), and, practically in equal proportion, in class actions (39.5%)" (Brand, 2020, p.18).

Thus, according to the General Budget of the Nation for 2022, the Chamber of Representatives approved for the following year, based on the budget bill for 2022, a budget of approximately 350.4 billion pesos, a figure that if the Colombian State were to lose all the legal proceedings that the Nation has against it, would leave it in total ruin.



Now, in the specific case and based on the data expressed by the Special Jurisdiction for Peace (JEP), the following was established:

"In Auto 005 of 2018, by which it took cognizance of macro-case 003, the Chamber counted that between 1988 and 2014 there were approximately 2,248 victims of deaths illegitimately presented as combat casualties in Colombia. In Auto 033 of 2021, for its part, the Court stated that, after an exercise of contrasting information, there could be 6,402 victims of the type of extrajudicial executions addressed in the macro-case, during the period between 2002 and 2008" (Idárraga et al., 2021) (Bold and underlined outside the text).

According to the above, we will take as a basis the number of 6,402 victims of extrajudicial executions during the period between 2002 and 2008, a figure that is exorbitant because it is approximately 1,000 people killed per year by state agents, which, according to the Constitution, have the constitutional obligation and duty to protect every person, men, women and children living in the Colombian territory.

According to the Casanare sub-case of Case No. 03 before the Special Jurisdiction for Peace, it was reported that there are approximately 230 proceedings before the Attorney General's Office for the death of approximately 415 people, and it was determined that the rate of deaths illegitimately presented as casualties in combat is 12 per 100,000 inhabitants in Casanare (Idárraga et al., 2021).

To perform a pragmatic work in order to determine the economic impact of the judgments against the Nation, by the action of State agents for extrajudicial executions in protected person in the Department of Casanare, will be taken as a basis the judgment of Radicación: 85001-23-31- 000-2010-00178-01 (47671), Proferida por el H. Consejo de Estado Sala de lo Contenciosos Administrativo, Sección Tercera Sub-Sección C, C.P. JAIME ORLANDO SANTOFIMIO GAMBOA, dated September seven (7), two thousand fifteen (2015), by which the Chamber decided the appeal filed by the defendant against the judgment issued by the Administrative Court of Casanare dated February thirteen (13), 2013, the defendant public entities were declared administratively liable for the violent death of José Lorenzo Taborda Taborda, on March 14, 2007 in the vicinity of the municipality of Monterrey-Casanare, claim that was filed in 2010, and in which it was condemned in second instance to the payment of an approximate of 1.300 million pesos for moral damages, and in order to determine, although of the approximately 415 people victims of state agents for extrajudicial killings between 2002 and 2008, if each of their families will sue the State under the means of control of direct reparation and seek to repair the damage caused and based on the 2010-00178 judgment, on the approximate money to be paid by the State to the victim families, having estimated 1000 million pesos for each process initiated by the families of the 415 persons mentioned above, we would be talking about a total of 415.000.000.000, or 415 billion pesos, which would give an approximate value of \$104 million dollars, a quite considerable figure if we take as a reference, that we are only talking about the partially total cases in the department of Casanare, which of the total number of victims of forced disappearance, would only be almost 15%, and if we take into account the total number of victims of forced disappearance, it would only be almost 15%, and if we take into account the total number of victims of forced disappearance, it would be almost 15%, Although this amount is not exact, it can be presumed that this amount is close to the amounts that the State must pay to the families of the victims of the conflict, which leads us to think that one of the reasons why the H. Council of State changed its decision is that the State has not been able to pay the families of the victims of the conflict, and that the State has not been able to pay the families of the victims of the conflict. This leads us to think that one of the reasons why the H. Council of State changed its position regarding the expiration term in the issues related to false positive is due to a matter of financial or economic viability of the State, since it is obvious that based on the data provided by the JEP and the Attorney General's Office, there are approximately 6,402 persons who have been victims of the conflict.



victims of State agents, i.e., there are 6,402 families to whom the Nation must make reparations, so changing the rules of the game would serve as an excuse for the victims and their families not to receive any money and for the State to be able to save this payment.

Finally, it can be argued that there is no certainty, if for purely economic reasons, the H. Council of State made this change in its jurisprudence, because based on the *Villa-Mizar Duran y Otros Vs. Colombia*, of November 20, 2018, the Inter-American Court of Human Rights, instance in which some cases, if not all the processes in which the contentious-administrative jurisdiction has declared the caducidad, will arrive, and in the near future the State will have to bear judgments against it, in which the sums could amount to one million dollars as happened in the aforementioned Judgment, Therefore, the only thing that the Council of State seems to be doing is to gain time in order not to pay such full reparations at this juncture, leaving to future generations the payment of the IACHR sentences, which are usually much more costly for the country, which will make the finances of the Colombian State unviable, seriously affecting the public policies of future generations.

In this regard, the co-author of this paper, Dr. Corina Duque Ayala, concluded the following on this subject:

To have ignored the doctrine of the international courts, in the Unification Ruling of the Third Section of the Council of State, dated January 20, 2020, regarding the reparations owed to the victims of the armed conflict in Colombia, and especially of the "false positives", in the midst of the peace process, with a government that has put the implementation of the process of the Havana Agreements in jeopardy, in relation to the resources that should be directed to the victims through the JEP and the Truth Commission, allows foreseeing that in the coming years, the State will be declared responsible and condemned for having violated its obligation to apply the precedents of the international courts, in terms of comprehensive reparation. (Duque Ayala, 2019)

2.3. *Pandemic Direct Repair Process*

The world in recent years has gone through a situation in which the whole society had to change its way of life due to a global pandemic caused by COVID-19, this scenario made public institutions change their methodologies to continue functioning and that countries did not stop their production, and likewise public institutions had to carry out all actions aimed at not stopping their operation.

As a result of the above, in the Colombian case, a mandatory quarantine was imposed by the national government, which made public officials had to perform the so-called telework, and in the case of the Judicial Branch, implement all the technological tools they had at hand to conduct hearings, digitize files, to file lawsuits and appeals through electronic means, in this regard it has to be noted that:

The new pandemic reality generated by COVID 19, forced the Judicial Branch to advance rapidly together with its judicial operators, in the implementation of the digitalized file, approaching digital environments and favoring the digital transition for all processes that are advanced in the two jurisdictions, the ordinary and the administrative litigation (Duque Ayala et al., 2022).

These legislative advances have given strength to the judicial branch to be able to continue functioning even with this pandemic, but this is a challenge for judicial officials and lawyers who practice as prosecutors, who so far are beginning to use to their full capacity the technological means that are available to them, in order to streamline the administration of justice and bring it into the XXI century, to improve the judicial system, in order to help the victims of armed violence in the country, he also notes that: "the reform served to concretize basic constitutional principles of the administration of justice, such as transparency in judicial proceedings and greater participation of the citizen directly affected by the State in virtual hearings" (Duque Ayala et al., 2022).

CONCLUSIONS

According to the international community, human rights organizations and international humanitarian law, the so-called false positives are crimes against humanity, for which the State is called to respond because its officials, especially the military, failed in their legal obligation to protect the inhabitants of Colombia, violating the fundamental rights established in the constitution, such as life and property, and dignity.

For more than 50 years of confrontation, the violence that erupted in the Colombian armed conflict has been the main factor, so that at one point in its history, this illicit activity of disappearances and extrajudicial executions can be carried out and, even worse, by actors from the same country as a reflection of paramilitary violence, and control over the matter was not fully effective, the Colombian judiciary had not been the object of observation by the State Ombudsman's Office since before the first decade of the century, the Office of the Prosecutor of the International Criminal Court, an organization concerned about impunity and lack of punishment for these crimes.

There are so many notorious cases of false positives that international organizations are beginning to question the real interference of the national justice systems, which, according to information recently circulated in the national media, aim to minimize the damage to the victims, so much so that several military personnel responsible for these crimes against humanity resorted to the special jurisdiction for peace, precisely to escape the harsh penalties imposed on them by the ordinary justice system.

In this sense, given the importance of false positives in the field of human rights and international humanitarian law, the recommendations formulated in this paper from an investigative perspective, where as a result of the serious questioning by the international community due to the lack of judicial actions and sanctions against state agents and the state itself, there is an urgent need to reevaluate this legal position, because when the victims reach international instances where the negligent and malicious actions of the entire military and judicial section are reviewed in depth, harsh penalties will be imposed, It is urgent the need to reevaluate this legal position, because when the victims reach international instances where the negligent and malicious actions of the entire military and judicial section are reviewed in depth, harsh pecuniary sanctions will be imposed.

It also recommends long-term, in-depth training and renewal within the armed forces to manage respect for human rights, where optimal qualifications in both the application of and respect for human rights are mandatory requirements for long-term service. As far as the victim reparation system is concerned, it should not only adhere to the parameters of the right to justice,



The right to truth and the right to non-repetition, but as far as reparation is concerned, this should never be symbolic, but proportional to the damage and harm. suffer.

It is not possible to establish some kind of discriminatory class for the victims who must receive pecuniary compensation; it is sufficient that they demonstrate their status as victims, regardless of the date on which they were victimized by agents of the state or private individuals with the assistance of agents of the state, that is, special consideration must be given to the harm suffered by the victims, even without justifying the right to justice, truth, reparation and guarantees of non-repetition that they will be fully repaired for the aggression suffered and that things will automatically return to the way they were before.

However, a mechanism is also required to try to improve Colombia's accountability for false positives, paying special attention to the process currently referred to the Special Court for Peace, which is known to be contributing to the impunity of this series of crimes against humanity, which would also be violating the rights of the relatives of the deceased persons who deserve to know the truth about the events in which their relatives lost their lives at the hands of State agents.

Finally, as has been outlined throughout this brief, changing the jurisprudence applicable to these cases of crimes against humanity with respect to the statute of limitations, it can be glimpsed that this change, apparently could be a consequence of shielding the Colombian State from future lawsuits against the nation, This, as has been said, would generate losses greater than the budget available. Legally, the change is due to the fact that Colombian legislation establishes a term of 2 years, departing from the legal line in which there is no statute of limitations for this type of crime, Even so, the rights and reparation of the victims who do not have access to information are left adrift, knowing that they could sue the state for the wrongdoing of its officials, but the reality is that those who have suffered this type of atrocities are people of scarce economic resources from remote places and lack the legal knowledge to seek justice, truth and comprehensive reparation, which leads to a revictimization of people who have suffered the most immense pain for losing their families.

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