A HANDBOOK FOR PRACTITIONERS | **COLOMBIA**

# Civil Liability for Human Rights Violations

## AUTHORS

**Isabella Ariza**
Associate Attorney at Sierra Club, Washington, DC
**PROFILE**

**Tatiana Devia**
Staff Attorney at Corporate Accountability Lab, Chicago, IL
**PROFILE**

**Alejandro Jiménez-Ospina**
Transitional Justice Coordinator at Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia), Bogotá, Colombia
**PROFILE**

**Johanna Mora**
LLM, University of Washington, PhD in Law student at the University of Washington Seattle, WA
**PROFILE**

**Sergio Pulido-Jiménez**
Strategic Litigation Researcher at Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia), Bogotá, Colombia
**PROFILE**

**Charity Ryerson**
Executive Director and Founder at Corporate Accountability Lab, Chicago, IL
**PROFILE**

| FREQUENTLY USED ABBREVIATIONS | |
|---|---|
| CCA | Constitutional Class Action |
| PA | Popular Action |

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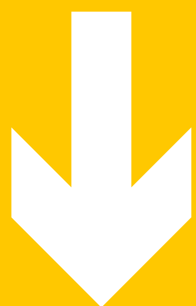
# CONTENTS

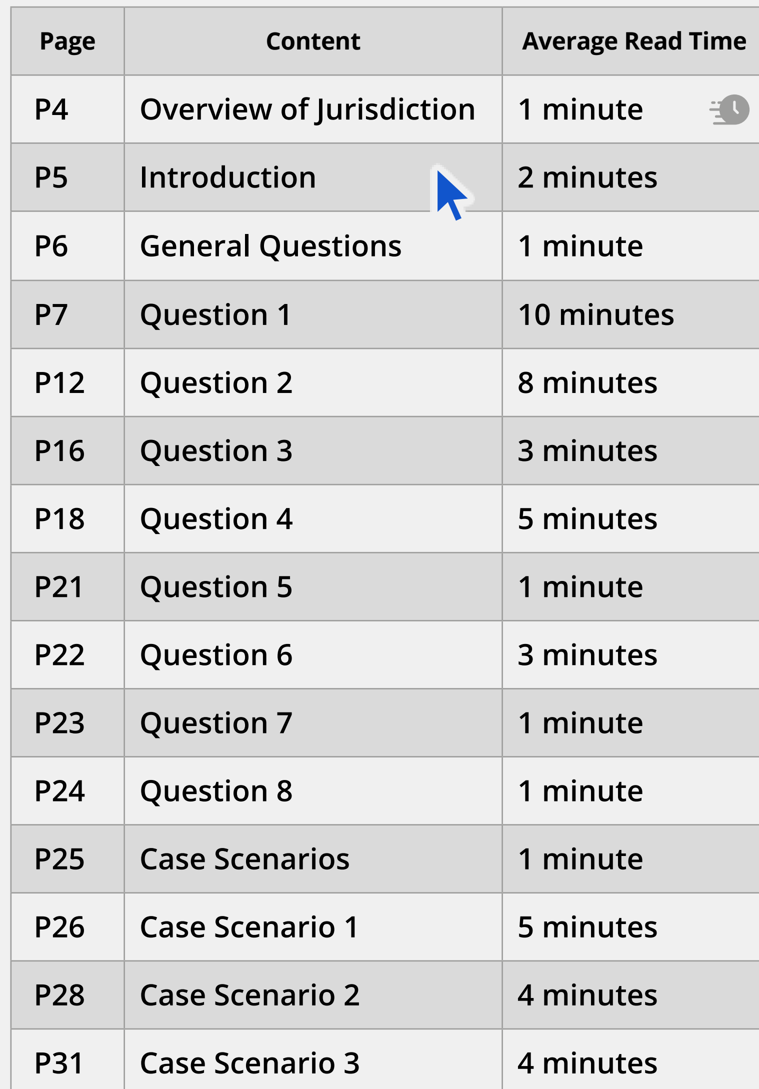


RETURN TO THIS
TABLE OF CONTENTS

VIEW THE START OF
THE CURRENT SECTION

INTERACTIVE

## TABLE OF CONTENTS




| Page | Content | Average Read Time |
|---|---|---|
| P4 | Overview of Jurisdiction | 1 minute |
| P5 | Introduction | 2 minutes |
| P6 | General Questions | 1 minute |
| P7 | Question 1 | 10 minutes |
| P12 | Question 2 | 8 minutes |
| P16 | Question 3 | 3 minutes |
| P18 | Question 4 | 5 minutes |
| P21 | Question 5 | 1 minute |
| P22 | Question 6 | 3 minutes |
| P23 | Question 7 | 1 minute |
| P24 | Question 8 | 1 minute |
| P25 | Case Scenarios | 1 minute |
| P26 | Case Scenario 1 | 5 minutes |
| P28 | Case Scenario 2 | 4 minutes |
| P31 | Case Scenario 3 | 4 minutes |

# COLOMBIA

**Colombia has a civil law system. The law of civil remedies primarily refers to extra-contractual liability (also known as non-contractual liability) equivalent to tort liability in common law jurisdictions.**
**The Colombian legal system has a few distinctive features. First, reparation for harm caused by public bodies is obtained under contentious-administrative jurisdiction and is not technically considered a civil remedy. Second, constitutional actions, such as popular actions, class actions and a writ for constitutional protection, or *tutela*, are available to the victims of human rights violations. Using civil claims as a means of human rights protection in Colombia has several advantages, but the cost of litigation and the lengthy duration of proceedings remain significant barriers.**



## INDICES

**59/167**
**Democracy Index 2021 Ranking**

**64/100**
**Freedom House 2022 Score**

**87/180**
**Transparency International Corruption Index 2021 Ranking**

The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development.
The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: Democracy Index by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); Freedom House (rates people's access to political rights and civil liberties with 100 being an optimal score); and Transparency International Corruption Index (ranks 180 countries by their perceived levels of public sector corruption).

## Introduction

1. Colombian law provides many avenues to seek civil reparation[1] for human rights abuses. The selection of an appropriate avenue for reparation depends on who caused the harm, who was harmed, and what right or interest was injured.

2. Whenever a *private party* causes harm to another, civil remedies are available under Colombia's Civil Code.[2] Generally, the injured party may sue an individual, a group of individuals, or a private company(ies) for extra-contractual harm. Extra-contractual liability designates situations of civil liability that occur in the absence of a contract between the parties. However, if an individual is injured by the actions or omissions of a *public body* (ie police officers or judicial agents), they must seek reparations through the country's **contentious-administrative jurisdiction**. The applicable law for reparations from state actors is the Code of Administrative Procedure and Administrative Litigation,[3] and not the Civil Code.

3. Depending on the number of claimants and the type of rights affected, constitutional actions like **popular actions** (for the protection of collective rights) and **class actions** (when a group of twenty or more people have been harmed) are also available. The remedy under Colombia's Constitution known as a **writ for constitutional protection** or ***tutela***, although very common in Colombian legal culture, is not meant to grant economic damages to victims. Nonetheless, it is possible to use this avenue in exceptional circumstances. For reparations for injuries that resulted from a crime, another option is to start civil reparations proceedings within a criminal process.

4. This report discusses several avenues to seek reparations for human rights abuses through civil litigation, including through asserting extra-contractual civil liability, labour law and constitutional guarantees. It also discusses three significant Supreme Court of Justice decisions.[4] In the first of these, relevant to the understanding of causation, the Supreme Court found an oil company civilly liable and sentenced it to pay economic and non-economic damages for the harms caused by an armed group's blasting of a pipeline (see the ***Machuca*** case highlighted after para [10] below). In the second case, relevant to strict liability for environmental harms, the Supreme Court held that a company was strictly liable for a flower grower's crop loss because its logging operations altered the ecosystem (see [25] below). In the third case, relevant to the possibility of using the civil courts to claim labour-related harms, the Supreme Court held the country's largest airline accountable for disincentivising the right to freedom of association and ordered it to pay civil reparations to its union (see the ***Avianca*** case highlighted after [14] below).



1 We define a civil reparation as a remedy that comes from a judicial process where compensation or other forms of relief can be ordered if a harm is caused by another person.

2 Civil Code of the Republic of Colombia, Law 84 of 1873.

3 Code of Administrative Procedure and Administrative Litigation, Law 1437 of 2011.

4 Supreme Court of Justice decisions can be found on its website.

# General**Questions**

## Q1 Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

### Claims against public bodies

5. Reparation for harms caused by public bodies can be obtained under Colombia's contentious-administrative jurisdiction, but this is not technically considered a civil remedy in Colombian law. Nonetheless, contentious-administrative law provides a cause of action for compensation or other forms of relief for harm caused by another person. Thus, for comparative purposes, and for the purposes of highlighting remedies available for human rights violations under Columbian law, remedies arising from contentious-administrative law are listed with civil remedies in this chapter, although they do not arise from strictly civil causes of action (ie under the Civil Code).

6. Civil courts in Colombia do not have jurisdiction over public bodies. Article 104 of the Code of Administrative Procedure and Administrative Litigation states that the purpose of the contentious-administrative jurisdiction is to judge administrative disputes arising from the activities of public bodies and of private persons who perform public functions.[5] Thus, claims against public bodies related to assault or unlawful arrest and detention, environmental harm, or harmful or unfair labour conditions, must be brought before the contentious-administrative jurisdiction. In these cases the main source of liability is article 90 of the Constitution,[6] which establishes 'wrongful damage' (*daño antijurídico*) as the legal standard for the liability of a public body for its actions or omissions.

7. It is important to note that in a claim brought in the contentious-administrative jurisdiction, a private corporation or individual can be included as a defendant, but only if the claim also includes a public body or a private person who performs public functions. Even if the public body is found not liable during such proceedings, the court could still hold the private corporation or individual liable. There is no final requirement of shared liability.

8. Except in criminal proceedings, if a public official or a private person who performs public functions is personally at fault, and his actions cannot be attributed to the public institution or their public function, victims must seek remedy through civil courts. If the action or omission of the public official is attributable to their institution, the claim must be brought before the contentious-administrative courts, whether the claimant sues the public official or their institution/employer.

5 Public bodies include companies in which the State has a participation equal to or greater than 50 per cent of its capital. Law 410 of 1971, art 466.

6 Constitution of Colombia, 1991.

## Claims against private corporations or individuals

### Extra-contractual civil liability

9. The main avenue to achieve redress in Colombia for harms that do not arise from a contract is an **extra-contractual civil liability claim**.[7] Claimants must prove that the defendant's act or omission resulted in the harm they suffered. In exceptional cases, and according to article 167 of the General Procedure Code,[8] the theory of the dynamic burden of proof allows judges to shift this burden to the defendant. The Constitutional Court has left open the possibility of pursuing civil litigation to hold third parties accountable for their involvement in causing harm.[9]

10. Generally, the statute of limitations for extra-contractual civil liability claims is ten years.[10] For claims concerning the conduct of a third party for which the defendant is liable, the statute of limitations is three years.[11] Other special cases have even shorter statutes of limitations (eg liability for damages caused by airplanes expires after two years,[12] and the statute of limitations on insurance claims is two years[13]). The statute of limitations varies for damages that are sought through civil proceedings within a criminal process (eg through a 'comprehensive reparation proceeding' explained in [20] below).

**SPOTLIGHT: THE *MACHUCA* CASE**

Decided by the Supreme Court of Justice in late 2018, the *Machuca* case is a landmark ruling on extra-contractual liability involving business activities and violations of human rights. The Supreme Court found Ocensa, an oil company, civilly liable for causing harm and sentenced it to pay economic and non-economic damages (see explanation of these types of damages in [46] below) to the Machuca community, which was affected by an oil spill that resulted when an armed group destroyed an oil pipeline. The issue at hand was not only the environmental harm caused by the oil spill (similar to the Chevron case in Ecuador or Shell in Nigeria), but also that the spilled oil caught fire and dozens of Machuca community members died as a result. Colombian law does not clearly delimit when an intervening event exonerates a party from civil liability. The Supreme Court decided that because the company created a risk which could have been avoided by designing the pipeline in a different way (ie avoiding its proximity to the Machuca community), it was civilly liable, despite the long causality chain.[14]

7 Civil Code (n 2), art 2341.

8 General Procedure Code, Law 1564 of 2012.

9 Constitutional Court. C-080/2018. Antonio José Lizarazo Ocampo. Note: The citation of Colombian court rulings always includes the name of the judge in charge of drafting the judgment. In this instance the judge is Antonio José Lizarazo Ocampo.

10 Civil Code (n 2), art 2356.

11 *ibid* art 2358.

12 Commerce Code, Decree 410 of 1971 art 183.

13 *ibid* art 1081.

14 Supreme Court of Justice. Civil Cassation Chamber. Filing 05736-31-89-001-2004-00042-01, SC5686-2018. 19 December 2018. Margarita Cabello Blanco.

## Labour law claims

11. Article 2 of the Procedural Code of Labour and Social Security[15] states that disputes and claims relating directly or indirectly to a labour contract, may only be brought before judges in labour courts.[16] The claimant must establish the link to the work and the link between the employer and the worker.

12. According to article 216 of the Substantive Labour Code (the Labour Code),[17] if the employer is proved to be at fault for a workplace accident or illness, full compensation is due. If the claim involves the consequences of an employer's *action*, the worker must prove that the employer is at fault, and the employer must prove that they carried out due diligence and took care to avoid liability. If the claim involves the consequences of an employer's *omission*, the employer must prove it undertook due diligence to protect the worker's health and safety.[18]

13. Labour contracts are applicable mainly in private relationships. Public officials are not usually bound to public bodies through labour contracts; they have a different legal relationship. Therefore, claims relating to conditions of work of public officials are mainly brought before the contentious-administrative courts. A public official would be able to bring a claim before a labour court if the person is categorised as a 'public worker'.[19] This would be a person who is involved in the construction or maintenance of public works or is a non-managerial worker of an industrial or commercial public company or mixed-economy companies with 90 per cent or more of public capital participation.[20]

14. If an employee, whether formally hired or not, is subject to harmful, unfair and/or illegal labour conditions, they may recover economic damages. If, for example, an employee works longer hours than the legal maximum of 48 hours per week and eight hours per day (10 hours including overtime),[21] they may sue their employer and ask the court to order the employer to pay the actual hours that the employee worked without pay.[22] If children are working without written authorisation from the Ministry of Labour, the employer will have to pay the child all owed amounts that arise from the contract (eg salary, medical insurance, pension, etc) in addition to administrative fines.[23] Where an employee is hired through an intermediary who does not disclose an employer's identity, and the employee suffers harmful, unfair and/or illegal labour conditions, rules governing the responsibilities of agencies and joint and several liability apply to the intermediaries.[24]

15 Procedural Code of Labour and Social Security, Decree 2158 of 1948.

16 This also applies to issues relating to union-related disputes and some social security disputes.

17 Substantive Labour Code 1951.

18 Supreme Court of Justice. Labour Cassation Chamber. Filing 64480. SL3189-2020. 19 August 2020. Donald José Dix Ponnefz.

19 Administrative Department for the Public Function. Concept 48711/2015. Filing 20156000048711.

20 Law Decree 3135 of 1968, art 5.

21 Or, exceptionally, 10 hours per day, with extra pay. For more detail, see art 161 of the Labour Code (n 17).

22 *ibid* art 161.

23 *ibid* art 31.

24 *ibid* art 32.

**SPOTLIGHT: THE *AVIANCA* CASE**

In 2020, the Labour Chamber of the Supreme Court of Justice ruled in a case against ***Avianca*** – the country's largest airline – and ordered it to pay its union a civil fine for having disincentivised workers from joining a union. Importantly, the Supreme Court ordered that the violation of human rights in this case had to be 'adequately repaired', even if claimants could have sought redress through administrative[25] or criminal courts.[26] The Court established that when there is a violation of the fundamental right to freedom of association, 'it is necessary to activate all the protection and defence mechanisms of the human rights protection systems, which ensure the adoption of effective measures to guarantee comprehensive reparation, the imposition of dissuasive sanctions, and the establishment of guarantees of non-repetition'.[27] The fact that other areas of law protect unions and unionised employees did not, in the Court's opinion, preclude the possibility of seeking civil remedies through labour courts.[28] The Supreme Court decided that the company's incentives for employees who did not join the union had resulted in economic damage to the union because it reduced the union's bargaining power and lost the union its opportunity to have more members. The Court did not specify whether future claims seeking similar civil reparation should be filed in civil or in labour courts.

## Social security mechanisms

15. Colombian law also provides workers with another legal avenue to claim their rights. When a worker is harmed by a workplace illness or accident, the Colombian social security system provides them with economic and healthcare benefits, mainly through the Labour Risk Social Security System administered by the country's Labour Risk Administrator. According to article 4 of Law 1562 of 2012,[29] the worker must have contracted an *illness* as a result of exposure to inherent risks related to the work or the environment in which the work was carried out. Article 3 of Law 1562 of 2012 defines a workplace *accident* as a sudden event that occurred because of or related to the work causing a lesion, disability, or death.[30]

16. Employers are legally bound to register employees on the Labour Risk Social Security System and pay the applicable fees for them. If a workplace accident or illness occurs, workers can seek healthcare and economic compensation through this system.[31] If the employer fails to fulfil its obligation, the law provides for different

25 *ibid* art 354.

26 Criminal Code, Law 599 of 2000, art 200.

27 Supreme Court of Justice. Labour Cassation Chamber. 3597-2020. 16 September 2020. Iván Mauricio Lenis Gómez.

28 *ibid*.

29 Law 1562 of 2012.

30 Art 3 of Law 1562 of 2012 details some situations that should be considered a labour accident. This provision is useful as a guide, especially in cases which fall into a grey area.

31 Healthcare includes services such as medical care, surgery, recovery care, medication, etc. Economic compensation includes (i) paid leave during the recovery period if the worker cannot go back to work; (ii) economic compensation when a permanent partial disability occurs as a consequence of the event and the work capacity loss is classified between five per cent and 50 per cent; (iii) a disability pension if the classification of work capacity loss surpasses 50 per cent; (iv) a survivor pension for some of the family members if the worker dies as a consequence of the accident or illness; and/or (v) a sum to cover the worker's funeral expenses.

consequences depending on whether (i) there was a delay in the payments of the fees, or (ii) the employer did not register their workers. Generally, if an employer does not register a worker on the system, the employer must assume the duties of the Labour Risk Administrator, granting the worker the benefits they would have received had the employer registered them on the system in the first place.

17. A worker can claim benefits from the Labour Risk Social Security System in addition to suing the employer in the labour courts for their role in the illness. To access benefits from the social security system, the worker does not have to prove that the employer was at fault or involved in misconduct (see [28] below). However, in their claim before a labour court judge, the worker must prove that the employer was at fault or engaged in misconduct. Thus, a worker may receive benefits from the social security system without showing a cause of action against the employer (if there is no fault or misconduct). If both claims succeed, however, article 216 of the Labour Code provides that deductions should be made from the award to the injured worker.

## Other remedies

### 'Popular Actions' and 'Class Actions' under the Constitution

18. Article 88 of the Constitution and Law 472 of 1998 provide for the possibility of commencing two types of constitutional actions that protect against the violation of rights which affect multiple individuals.

- **A Popular Action (PA)** allows claimants to seek to safeguard and protect collective interests and rights, such as those arising from the environment.[32] Since environmental damages may affect the quality of life of an entire community, a claimant may ask for preventive or restorative actions on behalf of the community.

- **A Constitutional Class Action (CCA)** is available when a group of twenty or more people want to seek economic compensation for damages sustained individually by each claimant. This is different to damages arising from a PA which focuses on collective rights which affect communities at large. Compensation here can be sought for economic and non-economic damages.[33] Although textually intended only to provide economic compensation, the influence of the Inter-American Court of Human Rights has seen courts adopt broader restorative measures in CCA cases. Among these, courts have ordered innovative reparation measures such as public condemnation of the defendant, guarantees of non-repetition, and an order to the legal representative of a company to publicly apologise to the community (see the *Doña Juana* case[34]). Lower court orders[35] have included restorative measures such as repopulating the fish of a river that a defendant had heavily contaminated (the *Anchicayá* case – this order was struck down by higher court). The statute of limitations to bring a CCA is generally two years.[36]

- PAs and CCAs can be brought both against public and private defendants.

32 Law 472 of 1998, art 2.

33 Colombian Constitution (n 6), art 88; Law 472/1998 art 3, 46.

34 Council of State. Contentious-administrative Chamber. Third Section. Filing 25000-23-26-000-1999-00002-04. (AG). 13 February 2013. Enrique Gil Botero.

35 Contentious Administrative Tribunal of Valle del Cauca. Judgment of 7 September 2009. Filing 2002-04584. MP Bertha Lucía Luna Benítez).

36 Code of Administrative Procedure and Administrative Litigation (n 3), art 47.

## Writ for constitutional protection

19. The constitutional remedy of a '*tutela*' or a writ for protection of constitutional rights is not meant to grant compensation or economic damages to victims. Rather, the purpose of a *tutela* is to guarantee fundamental rights through injunctions. A *tutela* can be brought against public and, in some cases, private bodies, including corporations or individuals.[37] Colombia's Constitutional Court has noted that it is not appropriate to seek compensation for damages through a *tutela* except in a very limited range of situations.[38] However, other components of reparation are available through a *tutela*.[39]

## Compensation within criminal proceedings

20. Although the criminal process alone can determine criminal liability, the Criminal Code[40] also provides for a mini-civil process, the so-called '**comprehensive reparation proceeding**',[41] which follows the rules of civil procedure.[42] In this, victims have the right to seek restitution or compensation from individuals or corporations, based on the economic harm that the crime caused them.[43] Because crimes are a source of civil liability according to the Civil Code, when a crime causes damages, victims are entitled to seek compensation within or outside of the criminal process.

## Q2 What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

## Claims against public bodies

21. Article 90 of the Constitution establishes that the State is liable for 'wrongful damages' that can be attributed to it. These are damages caused by the actions or omissions of public bodies. The State will be liable for public bodies' actions if, through a contentious-administrative claim, the claimant proves the following elements: (i) a certain and determined or determinable damage or injury of an economic or non-economic nature that is inflicted on one or several individuals; (ii) a conduct that is legally attributable to a public body; and (iii) a causal relationship between (i) and (ii), that is, 'that the damage occurred as a direct consequence of the action or omission attributable to the public body'.[44]

37 Constitutional Court. T-634/2013; Constitutional Court. T-342/2013; and Constitutional Court. T-309A/2013.

38 Constitutional Court. T-160/2021. Cristina Pardo Schlesinger.

39 For example, the Constitutional Court has ordered retractions in defamation cases ('*derecho al buen nombre*'), and injunctions as a guarantee of non-repetition. See Decree 2591/1991 art 35.

40 Criminal Code (n 26).

41 Criminal Procedure Code, Law 906 of 2004 art 102; Criminal Code (n 26) art 94 and 96.

42 Supreme Court of Justice. Criminal Cassation Chamber. SP13300-2017 (50034). 30 August 2017. Fernando Alberto Castro Caballero.

43 In criminal law, the presumption of innocence can only be disproved by a beyond-reasonable-doubt standard based on the probative material that establishes the elements of the crime and its connection to the person. But in civil matters and in the comprehensive reparation proceeding, the standard is the 'free evaluation of the evidence' by the judge, who must use the 'rules of sound criticism' to determine the probative weight of the evidence. This 'sound criticism' allows the judge to value the evidence based on the rules of logic, science, and experience.

44 Council of State. Contentious-administrative Chamber. Third Section. Filing 25000-23-26-000-2005-00883-01 (38139). 8 October 2016. Hernán Andrade Rincón.

22. On the other hand, when claimants allege that the public body is liable for an *omission*, they must prove: (i) the existence of a legal obligation to carry out the action through which the damages would have been avoided; (ii) the failure to put into operation the resources available to adequately fulfil such legal obligation; (iii) damages; and (iv) causation.

23. In all cases, the cause of damages should be attributable to the State. Thus, it is not enough to prove the existence of damages and the illegality of what caused them, but also there must be a connection between those illegal damages and the State.[45] Attribution rests on the conceptualisation of 'titles of attribution of fault' (*títulos de imputación*).[46] The most important of these are:

    i. **Failure in the service** (*falla en el servicio*). This is the main fault attribution theory applicable in State liability cases in Colombia. According to the Council of State, the State has obligations which, when breached, entail liability and create a subsequent obligation to remedy. This is a subjective liability regime because intent or negligence must be proved in order to attribute liability to the State.[47]

    ii. **Special damage** (*daño especial*). This is another fault attribution theory applicable in State liability cases in Colombia. According to the Council of State, the State must remedy damages caused to claimants through its activities, even when acting lawfully. This liability is, by its nature, strict. This only happens when the balance of public duties is broken and affects the persons in benefit of the State, that is, when the damage suffered is abnormal, excessive, or more burdensome than the normal.[48]

    iii. **Exceptional risk** (*riesgo excepcional*). This is yet another fault attribution theory applicable in State liability cases in Colombia. According to the Council of State, the State must remedy damages caused when its activity exposes people to a serious and abnormal risk. This liability is, by its nature, strict.[49]

## Extra-contractual civil liability

24. The four elements that a claimant must prove before civil courts in an extra-contractual civil liability claim are a) unlawful conduct; b) actual damage or injury; c) causation; and d) attribution of fault:

    - **Unlawful conduct** can be an action or an omission.

    - **Damages** must be certain (ie the claimant must prove they have suffered an actual injury),[50] personal (ie the claimant must have suffered them directly and/or have standing to sue) and legitimate (ie they must affect a vested, valid, legally protected interest).[51] Damages in Colombia fall into two categories: economic and non-economic damages.[52] Economic damages include actual loss (ie how much

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45 Constitutional Court, C-333/1996. Alejandro Martínez Caballero.

46 Colombian law does not provide a comprehensive list of titles of attribution. It is part of the function of the judge to establish the one applicable in each case. This list is not exhaustive.

47 Council of State. Contentious-administrative Chamber. Third Section. Filing 15.263. 19 June 2008. Myriam Guerrero de Escobar.

48 Council of State. Contentious-administrative Chamber. Third Section. Filing 66001-23-31-000-1997-03613-01 (16421). 8 March 2007. Ruth Stella Correa Palacio.

49 Council of State. Contentious-administrative Chamber. Third Section. Filing 76001-23-31-000-2006-03682-01 (42992). 3 December 2018. María Adriana Marín.

50 Supreme Court of Justice. Civil Cassation Chamber. Filing 11001-31-03-008-2000-00196-01. SC-16690-2016. 17 November 2016. Álvaro Fernando García Restrepo.

51 Luis Fernando Ternera Barrios and Francisco Ternera Barrios, 'Breves comentarios sobre el daño y su indemnización' ('*Short Comments on Damage and Indemnification*') (2008) *Revista Opinión Jurídica*, 7(13), 97-112.

52 *ibid*.

money the victim lost);[53] loss of profit (known as consequential damages);[54] and loss of opportunity or chance[55] (ie the amount the victim would have obtained as a benefit or avoided as a loss).[56] The Supreme Court of Justice has also recognised non-economic or 'moral' damages, such as emotional harm, pain, and suffering.[57]

- To establish whether the **unlawful conduct caused** the alleged damages, judges usually apply analysis in terms of the theory of adequate causation and focus on whether a cause is suitable to determine a result.[58] The Supreme Court has stated that to assess adequate cause, the judge shall use logic, probability, and rules of rationality.[59]
- **Attribution of fault** can be subjective or objective. For subjective attribution of fault, the conduct must be intentional or negligent.[60] Objective attribution of fault is exceptional and will only exist under specific circumstances, such as when the defendant is engaged in dangerous activities.[61] The Supreme Court has been consistent in characterising dangerous activities as those with a high potential of causing harm, of an uncontrollable and unpredictable nature, and uncertain as to their effects or potential for destruction.[62]

## Strict liability

25. Colombian law on strict liability for dangerous activities[63] provides that a person who performs an abnormally dangerous activity is strictly liable for the damage that such activity causes. This strict liability can apply to environmental harm caused by dangerous activities. **A recent Supreme Court decision (*Tahami & Cultiflores*) held that a company was strictly liable for a flower grower's crop loss because its logging operations altered the ecosystem**.[64] In this case, the Supreme Court applied the principle that the 'polluter pays' and granted relief to a claimant after the defendant's 'alteration of the environment' resulted in three avalanches that affected a nearby dam and flooded the claimant's crops.

## CCAs

26. A CCA must comply with the same elements described above in [24] for extra-contractual civil liability claims. Unlike PAs (explained in further detail in [27] below), CCAs are not required to address collective rights. Additional requirements are:

53 As an illustration, when the claimant has paid medical bills, including for medicines, therapies, etc as a result of an accident caused by the defendant, the defendant must pay for the costs the claimant has already paid out.

54 This might arise when the victim is not able to work for many months as a consequence of an accident caused by the defendant. Since the victim will not receive a salary, the defendant must pay the expected amount for this period.

55 An example might be when the victim had an important competition coming up and he or she could not participate due to an accident caused by the defendant. The victim lost the chance to participate and potentially to win.

56 Civil Code (n 2) arts 1613 and 1614.

57 When a claimant has lost a close relative in an accident caused by a defendant, the claimant is in principle entitled to claim for emotional pain and suffering.

58 Rodrigo Fuentes Guiñes, 'Las teorías tradicionales sobre la causalidad' (2010) Revista de Derecho y Ciencias Penales 14, 37.

59 Supreme Court of Justice. Civil Cassation Chamber. Filing 11001-31-03-028-2002-00188-01. 14 December 2012. Ariel Salazar Ramírez.

60 Gilberto Martínez Rave and Catalina Martínez Tamayo, *Responsabilidad civil extracontractual* (Temis 2003).

61 Civil Code (n 2) art 2356.

62 Javier Tamayo Jaramillo, *Tratado de Responsabilidad Civil* (Legis 2007) 859. Among hazardous activities specified are those that involve the use of machines, instruments, apparatus, energy, or substances that have risks or dangers as a result of their installation, their explosive or inflammable nature, or their velocity. Among others, see Arturo Valencia Zea*, Derecho Civil: De las Obligaciones* (Temis 1998) 288.

63 Civil Code (n 2) art 2356

64 Supreme Court of Justice. Civil Cassation Chamber. Filing 05001-31-03-001-2015-00658-01, SC3460-2021. 18 August 2021. Luis Armando Tolosa Villabona.

- **A minimum number of claimants:** At least 20 people.[65] Once one member of the group initiates the action, the effects of the process extend to all the members covered by the CCA, except to those who expressly exclude themselves from the group and who can then sue separately.[66]
- **Statute of limitations:** The CCA must be brought generally within two years of the date on which the harm was caused or the injurious action that caused it ceased.[67] There is an exception when the damage arises because of an administrative act and the legal action intends to void this harmful act. In this scenario, the request must be submitted within four months.[68]
- **Procedure:** When one of the defendants is a public body, the CCA shall be examined by the administrative jurisdiction under its own procedural rules.[69]

## PAs

27. According to article 88 of the Constitution, PAs are a primary and non-subsidiary mechanism to protect collective rights and interests.[70] They can be exercised regardless of whether there are other means of defence available, in contrast to the *tutela* (see [30] below).[71] PAs apply principles of civil liability, such as verification of a contingent or actual collective harm, verification of an action attributable to the defendant (who can be a public or private body or an individual),[72] and a causal link between the two. They can be used as long as the threat or danger to the collective interest or right persists.[73] One of the advantages of a PA is that every citizen, whether a natural or legal person, is entitled to file an action,[74] and it is not essential that the particular claimant belongs to the affected community. The claimant is also not required to intervene through an attorney.

## Labour law and social security mechanisms

28. According to article 216 of the **Labour Code**, when it is proved in court that the employer is liable and at fault for a workplace accident or illness, the employer must compensate the worker accordingly. In parallel, workers may claim the benefits that the Labour Risk **Social Security System** provides, as explained in [15] above.

29. What differentiates the two regimes is the type of liability. The Labour Risk Social Security System is based on a strict liability regime in which the employer's fault does not have to be proved for the worker to receive benefits. But before a labour court judge, a worker must claim that the harm suffered was the result of the employer's action or omission, and was the employer's fault, and, if proved, the worker will receive full compensation for the harm suffered. The *rationale* behind

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65 These may be natural or legal persons. Law 472 of 1998 (n 32) art 12. It is permitted for just one person to sue as long as they are a member of the group and act on the group's behalf. See Constitutional Court. Sentencia C-116/2008. Rodrigo Escobar Gil.

66 Constitutional Court. C-304/2010. Luis Ernesto Vargas Silva.

67 Law 472 of 1998 (n 32) art 47.

68 Law 1437 of 2011 art 164.2 para h.

69 Code of Administrative Procedure and Administrative Litigation (n 3) art 164. Although some principles are similar, in administrative matters, the statute of limitations has an important exception: 'If the damage caused to the group comes from an administrative act and the litigation intends to void it, such a request must be submitted within four months of the communication, notification, or publication of the administrative act.'

70 Constitutional Court. C-459/2004; Constitutional Court. C–088/2000; Constitutional Court. C-036/1998; Constitutional Court. C-215/1999.

71 Council of State, Contentious-administrative Chamber, Third Section, Filing 73001-23- 31-2000-8654-01. 1 November 2001.

72 If the violation comes from an authority, or from an individual who exercises administrative functions, the PA must be brought before the administrative jurisdiction. If the violation comes from a corporation or an individual, it must be brought before the civil jurisdiction.

73 Law 472 of 1998 (n 32), art 11; Constitutional Court C-215/1999. Martha Victoria Sanchica Mendez.

74 *ibid* art 12

having this dual process is that if the employer is at fault, the worker should receive damages that go beyond the benefits of the social security system.

## Writ for constitutional protection

30. The constitutional remedy of *tutela* may be available under specific circumstances to protect fundamental rights as defined by the Colombian Constitution. According to article 25 of Decree 2591 of 1991,[75] a judge can impose economic sanctions in a limited range of cases due to a gross fundamental rights violation. The Constitutional Court's precedent has set the following requirements: (i) compensation is only available when there is no other judicial mechanism to compensate for the damage; (ii) compensation is not appropriate when the *tutela* is granted as a temporary measure; (iii) the violation or threat of violation of the fundamental right must be evident and a consequence of the clear and indisputable arbitrary action of the defendant; (iv) compensation must be necessary to ensure the effective enjoyment of the victim's fundamental right; (v) due process must be guaranteed to the defendant; (vi) compensation only covers actual damages, not loss of profit; (vii) when the judge decides that compensation is available, the claimants must establish: what the harm consisted of, why compensation is essential, what event or act caused the harm, causality, and what factors the judge must consider to determine the amount.[76]

## Compensation within criminal proceedings

31. In the comprehensive reparation proceeding (see [20]), the criminal conduct being assessed in a criminal case must be the same conduct that caused civil damages.[77] While deciding this proceeding, the criminal judge will serve as a civil judge and will apply the civil rules of evidence. Similarly, to define compensation, the judge will apply the same substantial rules about extra-contractual liability described above [24].

## Q3 Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?

Public bodies, corporations and/or individuals may face civil liability even when they are not the primary perpetrators of harm, but their conduct contributes to harm. Depending on whether the harm was caused by a dangerous activity (see [35]-[36] below), the harm contribution test will vary.[78]

75 Decree 2591 of 1991.

76 Constitutional Court. T-160/2021. Cristina Pardo Schlesinger.

77 Criminal Procedure Code (n 41) art 107.

78 The Supreme Court of Justice has touched on the issue of the plurality of authors in causing harm several times. The Court has explained the scope of art 2344 of the Civil Code, in the following terms: a) When there are several persons responsible for an accident, the obligation to compensate the damages is joint and several. Whoever makes the payment is subrogated in the action against the other(s), according to art 1579 (…); b) On numerous occasions, jurisprudence has defined the scope of the active concurrence of fault in causing harm to another, in the sense of declaring the liability *in solidum* of all those who concurred in culpable or negligent conduct that contributed to the production of harm (…). Such a doctrine flows clearly from arts 2341 and 2344 of the Civil Code (…); c) According to art 2344, when two or more people are responsible for a harm, their liability is joint and several. Supreme Court of Justice, Civil Cassation Chamber, 6 August 1985, Magistrate: Alberto Ospina Botero. Internal quotations omitted. Not available online.

## Joint and several liability

32. Joint and several liability exists when two or more individuals participate in harmful conduct. The Supreme Court of Justice recognised that the joint causality rule contained in article 2344 of the Civil Code entails 'a plural accusation against all authors'.[79] This notion of 'joint causality' or 'co-authorship' means that a victim is free to sue any responsible party.[80]

## Direct liability for a third party's conduct

33. In certain relations (ie parent-child, school-student, employer-employee), [81] the Civil Code establishes presumed third-party liability for failure to comply with certain duties.[82] For example, employers are liable for the acts of their employees because of the employer's fault in choosing (*in eligendo*) or supervising (*in vigilando*) the employee. For the employer to be held liable, claimants must show: (1) the employee's negligent conduct or omission; (2) that the damage was caused while the employee was under the employer's supervision; and (3) that the damage was caused while the employee was acting in the course of their employment. There is a debate among scholars on whether this liability should be framed as indirect (because of the conduct of a third party, such as an employee) or direct (because of the conduct of the entity, such as an employer, eg failing to supervise, choose, or educate, depending on the case).[83] According to the Constitutional Court,[84] all theories of indirect liability for third-party conduct may be rebutted, distinguishing it from more stringent tests.

34. Recent jurisprudence[85] states that corporations are not indirectly but rather *directly* liable for the actions of their employees or contractors. This development favours victims for several reasons. With direct third-party liability, defendants cannot escape liability by proving their diligence in choosing or supervising employees, or by proving that they could not prevent the harm. Current doctrine and jurisprudence agree that the only way to escape liability is for the employer to prove that there was a fortuitous event, *force majeure*, or that the damage was caused by the victim's sole fault. Direct liability is beneficial for victims because the statute of limitations for indirect liability is three years whereas for direct liability it is ten years.[86] Moreover, under direct liability, claimants do not have to prove a dependent or subordinate relationship between the perpetrator and the liable legal entity, nor do they have to prove the employer's duty to supervise the perpetrator.

35. Many cases before the Supreme Court that relate to corporate liability for agents' actions involve **dangerous activities** and, as a result, trigger **strict liability**.[87] Under the 'dangerous activities' test, fault is presumed and may only be rebutted

79 Supreme Court of Justice. Judgement 12/14/12, cited by Superior Tribunal of Bogotá, Judgmente 12/07/15, Judge Luis Roberto Suárez González. Filing 110013103007201000567-02.

80 Civil Code (n 2) art 2344.

81 This is the type of liability that is referred to as 'vicarious' in some jurisdictions.

82 Civil Code (n 2) art 2347.

83 See Javier Tamayo Jaramillo, *Tratado de Responsabilidad Civil*. (Editorial, Legis: Bogotá DC 2018). 'Legal persons [ie corporations] are not liable under the institution of third-party liability of article 2347 [of the Civil Code]. Both public law and private law corporations commit their direct responsibility whether due to dangerous activities, proven fault, or service failure, but never due to a third-party action.'

84 Constitutional Court. C-1235/2005. Rodrigo Escobar Gil.

85 Supreme Court of Justice. Civil Cassation Chamber. Filing 73411-31-03-001-2009-00042-01. SC13630-2015. 7 October 2015. Ariel Salazar Ramírez.

86 Civil Code (n 2) arts 2358 and 2536.

87 *ibid* art 2356.

by proving a fortuitous event (ie *force majeure*), or that the damage was caused by a third party,[88] or by the victim's sole fault. Consequently, due diligence does not exonerate the defendant.[89] In some cases, the Supreme Court has held that parent companies can be co-guardians of a dangerous activity if they have 'control' or 'direction' over the activity.[90] This is called 'shared guardianship'. According to Supreme Court jurisprudence, whoever controls the activity is responsible for the damage caused.

36. Although guardianship is usually tied to ownership, an owner can prove that they transferred guardianship to another person or entity, or even that control was taken away through theft or other mechanisms. If several persons concurrently and in different ways – depending on their interests or benefits – exercise 'effective control' or 'direction' of the dangerous activity at the same time, they share the legal duties associated with dangerous activities.[91] Even an entity that obtains a benefit from a dangerous activity can be regarded as its guardian.[92] Therefore, a subsidiary and a parent company can be co-guardians and be jointly and severally liable for a dangerous activity.

## Q4 When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or independent contractor in a supply chain?

### Generally

37. Under article 98 of the Commerce Code,[93] once a company is legally formed, it acquires the status of a legal person distinct from the individual directors or partners. This rule establishes the separation of corporate assets and debts from shareholder assets and debts, except in the case of corporate forms that establish joint and several liability for all (or some) directors or partners. Only in exceptional cases of insolvency or bankruptcy can a parent company be held accountable for the debts that its subsidiary cannot pay.

38. To link a parent company to a case about its subsidiary, several requirements must be met. First, the parent company and its subsidiary must form a 'business group'.[94] The essential elements for a business group are: (i) plurality of legal entities; (ii) subordination of the subsidiary[95] (the subsidiary's decision-making power is compromised, either directly or indirectly); and (iii) the parent company

88 Corte Suprema de Justicia, CAS. CIV. 08-10-1992. Exp 3446. CCXIX 518.

89 In trial, it will be presumed that owners of the entity conducting the dangerous activity had the guardianship duty, but owners can rebut this presumption by proving that they transferred the activity and had no dominion over it. The Supreme Court of Justice listed the following as examples of dangerous activities, but each judge must decide if a case involves a dangerous activity or not: i) railway operations; ii) transformation, transmission and distribution of electrical energy; iii) driving of motor vehicles; iv) aviation; v) crop spraying carried out with toxic substances; vi) factories that generate toxic substances; vii) any operation that arises from the artificial interruption of the flow of water in dams with the purpose of generating electricity; viii) construction or demolition of buildings; and, much less frequently, ix) medical procedures; x) financial activity; and, xi) freight elevators.

90 Supreme Court of Justice. Civil Chamber. Judgment 04/22/97.

91 Supreme Court of Justice. Civil Chamber. Judgment SC-47502018. 10/31/18.

92 Supreme Court of Justice. Civil Chamber. Judgment 05/26/89.

93 Commerce Code (n 12).

94 Law 222 of 1995 art 28.

95 Subordination is defined by art 260 of the Commerce Code.

and subsidiary's unity of purpose and direction (if the parent company imposes key guidelines on the subsidiary). If these three elements are met, the parent company will be liable to the subsidiary's creditors in cases of insolvency or bankruptcy unless it demonstrates that such insolvency or bankruptcy is unrelated to its actions, decisions, or omissions.[96] The parent company or subsidiary can rebut this presumption by demonstrating that the parent company's decisions have not caused the economic destabilisation of the subsidiary.

39. Although in theory it is possible to include a parent company of a multinational corporation headquartered outside of Colombia in a civil process against its Colombian subsidiary, at least two obstacles exist. First, the Superintendency of Corporations[97] has insisted that liability is of a strictly subsidiary and economic nature.[98] This means that the parent company would only have to pay creditors in Colombia that have been defrauded and only when the subsidiary cannot cover its debts. Second, the multinational corporation can rebut the presumption of liability if it can show that it did not issue any orders that led to the subsidiary's insolvency, or it can prove its absolute independence from the subsidiary's debts.

## Piercing the corporate veil

The Superintendency of Corporations describes piercing the corporate veil as ignoring the limitations of responsibility of partners or shareholders to a company and third parties, by making them directly responsible for the obligations of the legal entity. Piercing the veil effectively 'suppresses the main effect of legal personification in the corporation and limited liability, that is, the limitation of the associates in their liability up to the value of their contributions and makes them unlimitedly liable'.[99]

40. To **pierce the corporate veil** to hold shareholders and directors accountable is a challenge in Colombia, as it is in most jurisdictions. Theoretically, it is a straightforward legal avenue, with several statutes providing causes of action to do this.[100] Article 91 of the Criminal Procedure Code,[101] for example, establishes that 'at the request of the Prosecutor's Office' the judge may order 'the suspension of legal status or […] the temporary closure of premises of legal or natural persons, when there are well-founded reasons to infer that they have been wholly or partially dedicated to the development of criminal activities'. Similarly, article 44 of Law 190 of 1995 establishes that judicial authorities 'may lift the corporate veil of legal persons when it is necessary to determine the true beneficiary of the activities carried out by it'.[102]

41. If a corporation commits fraud, judicial authorities may hold shareholders liable for unpaid obligations. Courts may find that a corporation's independent legal liability no longer exists when the corporation was used to circumvent legal

96 Law 1116 of 2006 art 61. Constitutional Court. C-510/97. José Gregorio Hernández Galindo.

97 The Superintendency of Corporations is the national entity in charge of the surveillance and control of corporations. According to the Constitution, it has jurisdiction over disputes against corporations, and its jurisprudence is widely accepted by the judicial branch.

98 Superintendency of Corporations. Oficio 220-072648. 11 May 2018.

99 Superintendency of Corporations. Oficio 220-025851. 2019; Anzola Gil, Marcela. *Levantamiento del velo corporativo. Panorama y perspectivas. El caso colombiano*. (*Piercing the corporate veil. Panorama and perspectives. The Colombian case*) (Editorial, Bogotà DC, Universidad del Rosario 2010).

100 Law 142 of 1994 art 37; Law 222 of 1995 (n 94) art 71.

101 Criminal Procedure Code (n 41).

102 Law 190 of 1995.

restrictions. In such a case, a court may attribute the fraudulent actions to the shareholders.[103] However, in practice, the corporate veil has rarely been pierced in Colombia.[104] While the Superintendency of Corporations is silent about the circumstances that may lead to piercing the corporate veil, the basic standard is to establish whether the corporation was used to defraud the law or to the detriment of third parties. The statute of limitations for the action that leads to piercing the corporate veil is five years.[105]

42. The following conclusions can also be drawn from case law:
    - The mere breach of payment does not enable piercing the veil.[106]
    - The creation of a company with a corporate purpose similar to another one does not necessarily imply a continuation of the company through the other.[107]
    - The intention to defraud or to use the corporate entity for an illegitimate purpose must always be proved.[108]
    - Claimants must have a specific interest in the controversy or businesses.[109]
    - The intentional reduction of the company's assets[110] or transferring of assets[111] may lead to piercing the veil.
    - The transfer or theft of assets to avoid the payment of obligations may lead to piercing the veil.[112]
    - Using a corporation as a mechanism to obtain a benefit contrary to law may lead to piercing the veil.[113]

## Directors' liability

43. Directors of corporations[114] may be held liable both for their actions and their negligent omissions. According to article 23 of Law 222 of 1995, directors are required by law to display the diligence of a 'good businessman'.[115] They must act according to the diligence that a professional would use in handling their own business. This degree of diligence is greater than the one required from a 'good paterfamilias' in that directors must act with more than mere prudence. They will be jointly and severally liable for damages that are 'due to fraud or fault they cause to the company, to the partners or to third parties (...) In the cases of non-compliance or excess in their functions, violation of the law or of the

103 In Decision 220-121488 of 2018, the Superintendency of Corporations stated that the statute of limitations to file a veil piercing suit is five years. In Decision 220-025851 of 2019, the Superintendency of Corporations clarified that it is not a figure that has been set for the benefit of associates, managers, and others, but for the protection of economic order and third parties who have contractual relationships with the company.

104 Finding that a business group was created to circumvent the law, the Superintendency of Corporations lifted the corporate veil for the first time in 2013. In many other cases, the intention to defraud could not be proved.

105 Law 222 of 1995 (n 94) art 235.

106 *Caracol Televisión S.A. v Affinity Network S.A.S. et al*.

107 Superintendency of Corporations. Judgment No 800-53. 27 June 2017. *Julio Ramón Gálvez Ospina v Velásquez Candamil S.A.S. et al*.

108 Superintendency of Corporations. Judgment No 800-55, 16 October 2013. *Fondo para el Financiamiento del sector Agropecuario v Mónica Colombia S.A.S.*

109 Superintendency of Corporations. Judgment No 800-3937. 8 July 2015.

110 Superintendency of Corporations. Judgment No 801-16441. 3 October 2013. *RCN Televisión S.A. v Media Consulting Group S.A.S.*

111 Superintendency of Corporations. Judgment No 800-122. 11 December 2017. *Panavías Ingeniería & Construcciones S.A. v Agro Repuestos S.A.S.*

112 Superintendency of Corporations. Judgment No 800-4553. 19 March 2015. *María Virginia Cadena López v Malci S.A.S. et al.*

113 Superintendency of Corporations. Judgment No 801-17366. 10 December 2012. *Cámara de Comercio de Barranquilla v Carcos Mantenimiento de Equipos S.A.S. et al.*

114 Under Colombian law, '*administradores*'.

115 Law 222 of 1995 (n 94) art 23.

company's statutes, the administrator's fault will be presumed'.[116] Directors may be jointly liable whenever they breach their duties or exceed their powers. The Superintendency of Corporations has interpreted the law to mean that a director must be sufficiently informed before making decisions. It considers the failure to implement risk identification and management systems, which allows the company to identify, evaluate, measure, and prevent risks in a timely manner, to be a clear example of a lack of diligence.

44. Third parties that have been injured due to a director's actions or omissions may pursue individual actions against the director(s). Judges tend to respect decisions taken by directors during their activities, but 'such protection cannot be extended to the negligent omissions in which such officials engage'.[117] Although a director's legal liability is presumed if they breach their duty, liability does not always include economic damages. Claimants must demonstrate an economic detriment specifically attributable to the directors' actions or omissions to receive economic damages.[118]

## Q5 What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction??

45. Remedies differ depending on whether a victim seeks provisional or definitive remedies. **Provisional remedies** in both civil and labour proceedings can be broad[119] and may include 'unnominated provisional measures', such as non-economic measures and injunctions. Under contentious-administrative proceedings, judges may adopt preventive, conservatory, anticipative and suspensive provisional measures if such measures are directly and necessarily related to the lawsuit.[120]

46. Definitive remedies differ under substantive and procedural regulations. In civil claims, judges must provide for *integral* remedies. This includes compensating economic and non-economic damages,[121] but judges do not always order non-economic remedies, even when the harm is non-economic. The Council of State – the highest court in the contentious-administrative jurisdiction – has recognised victims' rights in accordance with international standards. It held that all damages must be repaired and ordered the use of non-economic remedies, adopting an integral restitution/integral reparation standard.[122]

47. Since PAs are preventive in nature, judges must adopt all necessary measures to prevent violations and protect the collective right or interests, including through the issue of injunctions, or orders to restore, or the creation of teams to supervise orders, etc. If the judge decides that economic compensation is due, it will be granted to the non-guilty public body tasked with protecting the affected collective right or interest, not to the PA claimants.[123]

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116 *ibid* art 24.

117 Superintendency of Corporations, Judgment No 800-85. 8 July 2015.

118 Superintendency of Corporations. Judgment No 801-64. 21 October 2014.

119 General Procedure Code (n 8) art 590.

120 Code of Administrative Procedure and Administrative Litigation (n 3) art 229.

121 Supreme Court of Justice. Civil Cassation Chamber. Filing 11001-31-03-003-2003-00660-01, SC10297-2014. 3 June 2014. Ariel Salazar Ramírez.

122 Council of State. Contentious-administrative Chamber. Third Section. Filing 76001-23-25-000-1996-04058-01 (16996). 20 February 2008. Enrique Gil Botero.

123 Law 472 of 1998 (n 32) art 34.

48. In Colombian procedure, congruence is essential. Therefore, in both civil and contentious-administrative procedures, judges may not order remedies that exceed what the claimant requested in the lawsuit (this is known as the *ultra* and *extra petita* decision-making prohibition).[124] As an exception, labour judges have the possibility of ordering *ultra* and *extra petita* measures.[125] In PAs, judges also can order *ultra* or *extra petita* measures, applying the principle of proportionality.[126]

## What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

## Advantages of using civil claims

### Statute of limitations

49. Extra-contractual civil liability claims have a longer statute of limitations (see [10] above) than the general two-year statute of limitations for contentious-administrative claims.[127] As a result, extra-contractual civil liability claims give victims and human rights organisations more time to design and implement complex litigation strategies, find evidence, ask for support, and build networks.

50. In contrast to criminal proceedings, the statute of limitations for civil claims is predictable. In criminal cases, it varies according to the maximum sentence set by law for the specific crime (five to twenty years) with exceptions for some serious human rights violations (thirty years), international crimes or crimes against children's sexual freedom or integrity (no statute of limitations).[128]

### Standard of proof

51. The applicable standard of proof for civil, labour and contentious-administrative claims is more advantageous than the standard of proof for compensation actions brought within criminal proceedings. In criminal prosecutions, responsibility must be proved 'beyond reasonable doubt'. In civil and contentious-administrative claims, the standard of proof varies from case to case, but it is generally lower than a criminal test.

### Autonomy in the development of litigation

52. In criminal proceedings, the State, represented by the Prosecutor's Office, is the only entity that can bring prosecutions, generally allowing victims limited autonomy in litigation.[129] In contrast, civil, labour and contentious-administrative claims allow victims complete autonomy in litigation – a major benefit.

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124 General Procedure Code (n 8) art 281.

125 Labour Code (n 17) art 50.

126 Council of State. Contentious-administrative Chamber. Second Section. Filing 08001-33-31-006-2007-00010-01(AP). 5 May 2020. Cesar Palomino Cortes.

127 According to art 164.2.i of the Code of Administrative Procedure and Administrative Litigation (n 3), when a contentious-administrative reparation process is initiated, the lawsuit should be filed before two years have passed from the day following the day of the events that caused the damage or when the claimant gained or should have gained knowledge of the damage. It is important to clarify that this rule has some exceptions, such as when the case involves forced disappearances.

128 Criminal Code (n 26) art 83.

129 In Colombia, victims have rights in criminal proceedings, which includes participating in hearings, presenting arguments, and challenging decisions, among others. But their agency is not complete, and the prosecution has the lead role during most of the process. By contrast, in ordinary civil, labour and contentious-administrative reparation claims, the claimants have the lead role in determining their litigation strategy.

## Disadvantages of using civil claims

### Exclusion of public bodies

53. Public bodies cannot be sued in civil claims. If the harm is caused by both public and private defendants, two separate claims can be brought: a civil claim against the private defendant and a contentious-administrative claim against the public defendant. But if a victim brings a claim only in the contentious-administrative jurisdiction, both public and private bodies can be sued there, gaining the benefit of not having to advance two separate strategies of litigation.

### Lack of capacity and resources for litigation

54. While one advantage of a civil claim is the claimant's autonomy, it can also be a barrier. In Colombia, there is no public body that assists victims with civil claims, nor are there public resources to support the collection of evidence, hiring of legal teams, etc. As a result, the **cost of litigation** falls on claimants.

55. Procedural legislation does, however, include assistance for indigent claimants (*amparo de pobreza*). According to article 154 of the General Procedure Code,[130] a claimant can seek financial assistance if they can show that they cannot cover the expenses of the process without renouncing their own livelihood or that of the person they take care of. If successful, the claimant does not have to pay for litigation costs such as *cauciones*,[131] justice's auxiliaries fees[132] or the expenses of the other party if the courts finds for the other party. Even so, this only covers the costs related to court proceedings, not the preparatory stage where most expenses are incurred in large cases.

### Length of proceedings

56. Civil claims tend to take a long time. Complex cases involving numerous claimants and defendants, technical or scientific evidence, or a large number of testimonies can go on for years. By contrast, in most cases an application for a writ for constitutional protection (*tutela*) would have a first decision in ten days or less and, if challenged, the second decision within twenty days.[133] However, a mechanism like the *tutela* is less likely to provide victims with complete redress, as explained in [19] above.

## Q7 Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

57. The General Procedure Code gives Colombian courts jurisdiction over civil actions against foreign defendants under the following circumstances: if the defendant has a registered domicile or residence in Colombia; if the defendant's residence is unknown, and the plaintiff has registered domicile or residence in Colombia; or if the violation occurred in Colombia.[134] Under these rules, any human rights violations committed in Colombia, regardless of the defendant's nationality, headquarters, or main place of operations, can be brought to Colombian courts.

130 General Procedure Code (n 8).

131 '*Cauciones*' are court-ordered amounts of money that a party must pay if they ask the court to order an injunction or a precautionary measure.

132 Justice's auxiliaries fees are fees a party must pay to have an expert testify.

133 All *tutelas* are sent to the Constitutional Court for a discretionary oversight process. If the Court selects a case to study, the judgment will take additional time, normally between six months and a year from the time the case reached the Court.

134 General Procedure Code (n 8) art 58.

58. In terms of private companies, the Commerce Code states that if any foreign company initiates permanent operations in the country, it shall establish a subsidiary with a registered address and a legal representative.[135] This person shall be included as part of any claim against the company.

59. While these rules are codified, the concrete application of these parameters is problematic in transnational civil litigation against foreign defendants, including private companies. Since foreign defendants do not have a duty to maintain property within the country, claims for economic compensation could be futile.

## Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?

60. Further research on civil liability can be done using different resources, most of them available online.

61. **For normative sources and jurisprudence:**

- The National Constitution, statutes, laws and other relevant regulatory information are available through the Unified Legal Information System, a website administered by the Ministry of Justice.
- Jurisprudence from the Supreme Court of Justice can be found on its website.
- Jurisprudence from the Council of State can be found on its website.
- Jurisprudence from the Constitutional Court can be found on its website.[136]

62. **For sources on business and human rights and strategic human rights litigation:**

- The Business and Human Rights Resource Centre documents Colombian cases in its database which is available online.
- Civil society organisations present their cases and collect information about them online. Some examples are Colectivo de Abogados José Alvear Restrepo, Comisión Colombiana de Juristas and PAX.
- Think tanks and academic institutions also make information available online. Among these are: Fundación Ideas para la Paz, Centro Regional de Empresas y Emprendimientos Responsables, Instituto de Estudios para el Desarrollo y la Paz, Observatorio Latinoamericano de Derechos Humanos y Empresas and Centro de Estudios de Derecho, Justicia y Sociedad.

63. **For sources on civil liability:**

- The Instituto Colombiano de Responsabilidad Civil y del Estado studies civil and State liability and publishes its activities online.

135 Commerce Code (n 12) art 472.

136 The Constitutional Court website contains a selection of judgements translated into English.

# Case Scenarios

## 1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. READ MORE

## 2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. READ MORE

## 3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. READ MORE

# Case **Scenario 1**

**Q1 Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

## Claims against the police and/or police officers

64. For claims against the police as a public body, given Colombia's rules on State liability explained above in [5],[137] victims should use the contentious-administrative jurisdiction. Such claims can be brought against both public and private bodies that caused the harm. In this case scenario, because Colombian law precludes suing the police through non-contractual liability claims in the ordinary civil jurisdiction, civil litigation could be used solely against Security Co and/or its personnel. This approach would likely fail or achieve limited results due to the main or principal liability of the police in the case.

65. The contentious-administrative jurisdiction is the primary and preferred legal avenue to bring claims against Colombia's police as a public body (rather than against individual officers) for harms suffered by protesters. Under this framework, the police may be liable for two types of harm: (i) restriction of personal freedom, and (ii) bodily harm (resulting in injury or death) caused by police action.

66. In cases of restriction of personal freedom in the context of judicial proceedings, article 65 of the statutory Law on the Administration of Justice (Law 270 of 1996) provides three scenarios where a person may be entitled to reparations: (i) malfunctioning of the administration of justice, (ii) judicial error, and (iii) unjust restriction of personal freedom. Wrongful damage caused during detention can also be grounds for reparations even if the detention was lawful, eg in cases of torture. In such a case, the victim would have to allege a failure in the service (*falla en el servicio*), a subjective liability standard that considers the officer's intent; or special damage (*daño especial*), a strict liability regime.[138]

67. In cases of bodily harm resulting in injury or death caused by police intervention, the standard is similar: the State (in this case, the police) must repair any wrongful damage caused. In these cases, the failure in the service (*falla en el servicio*)[139] and special damage (*daño especial*)[140] regimes can be used.

137 Code of Administrative Procedure and Administrative Litigation (n 3) art 104.

138 Council of State. Contentious-administrative Chamber. Third Section. Filing 19001-23-31-000-1998-00242-01. 24 July 2013. Enrique Gil Botero.

139 Council of State. Contentious-administrative Chamber. Third Section. Filing 76001-23-31-000-2007-01298-01. 12 June 2017. Hernán Andrade Rincón.

140 Council of State. Contentious-administrative Chamber. Third Section. Filing 19001-23-33-000-2017-00068-01. 5 March 2021. Marta Nubia Velásquez Rico.

## Claims against Security Co and/or its personnel

68. Security Co and/or its personnel could be sued, alongside public bodies, in the **contentious-administrative jurisdiction**.[141] If the claimants choose to sue them, the court will have to determine the proportion of liability attributable to each defendant, in accordance with a causation analysis. The analysis of the involvement of Security Co and/or its personnel and its contribution to the reparations will vary depending on the facts of each case.

69. For **civil claims**, the main avenue to achieve redress for non-contractual damages is through an extra-contractual civil claim, where claimants must prove four elements mentioned above in [24]: (i) unlawful human conduct through an action or omission; (ii) damages; (iii) causation; and (iv) attribution of fault.[142] This applies to Security Co and/or its personnel.

**If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.**

70. Given that for the purposes of this exercise contentious-administrative jurisdiction is listed here alongside civil remedies, we believe that it is the best legal avenue to hold perpetrators accountable when a public body (ie the police) is involved. However, if the defendant is only Security Co and/or its personnel, the civil jurisdiction is the only avenue for a claim.

**Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?**

71. As stated in [64] above, the main avenue for Case Scenario 1 is the contentious-administrative jurisdiction. The following high-profile cases are of interest.

### Restrictions of personal freedom cases

72. In 2013, the Council of State[143] found the prison security institution liable for torture suffered by an inmate and ordered economic reparations for the harm following a contentious-administrative claim.

73. In 2018, the Council of State unified its jurisprudence on the applicable liability regime for the unjust restriction of personal freedom, modifying a 2013 decision that used a strict liability approach. As a result, currently, liability in contentious-administrative claims is based on fault.[144]

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141 Council of State. Contentious-administrative Chamber. Third Section. Filing 05001-23-31-000-1997-01510-01. 1 July 2015. Jaime Orlando Santofimio Gamboa.

142 Supreme Court of Justice. Civil Cassation Chamber. Filing 11001-31-03-019-2005-00327-01. 14 August 2017. Luis Alonso Rico Puerta.

143 Council of State. Contentious-administrative Chamber. Third Section. Filing 19001-23-31-000-1998-00242-01. 24 July 2013. Enrique Gil Botero.

144 Council of State. Contentious-administrative Chamber. Third Section. Filing 66001-23-31-000-2010-00235-01. 15 August 2018. Carlos Alberto Zambrano Barrera.

74. In 2020, the Council of State,[145] after the filing of a CCA, found the entity that runs prisons liable for inhumane conditions in a female penitentiary and ordered economic compensation and other measures guaranteeing non-repetition.

**Bodily harm (resulting in injury or death)**

75. In 2017, the Council of State[146] found the National Police liable for the homicide of one student and the bodily harm of another student caused by anti-riot units who intervened in a university protest. The Council of State ordered the police to pay for non-economic damages and for violating constitutionally or conventionally protected interests. It also issued an order for integral reparation measures, including the implementation of a human rights training course for the anti-riot units of the National Police and the publication of the judgment.

76. In 2021, the Council of State[147] found the National Police liable for the death of a man that occurred during the intervention of anti-riot units in a protest. The case is unique because the victim was not a participant in the protest and was inside his home. The tribunal found that the police's course of action was lawful since the use of force was not arbitrary. Nonetheless, given the result (the death of the victim) and the fact that the police caused it, the Council of State applied a strict liability regime, condemned the National Police, and confirmed the order requiring the payment of economic damages to the victims.

# Case**Scenario 2**

**Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

77. The local community, its representatives, and/or someone acting on their behalf, can bring civil claims against Subsidiary Co and, potentially, against Parent Co. They can choose to bring an extra-contractual civil liability claim or a CCA.

145 Council of State. Contentious-administrative Chamber. Third Section. Filing 18001-23-33-000-2013-00216-01 (AG). 20 November 2020. Alberto Montaña Plata.

146 Council of State. Contentious-administrative Chamber. Third Section. Filing 76001-23-31-000-2007-01298-01. 12 June 2017. Hernán Andrade Rincón.

147 Council of State. Contentious-administrative Chamber. Third Section. Filing 19001-23-33-000-2017-00068-01. 5 March 2021. Marta Nubia Velásquez Rico.

### Extra-contractual civil liability claims

78. Claimants must prove **four elements** to establish extra-contractual civil liability of Subsidiary Co: (i) unlawful human conduct (through an action or omission); (ii) damages (certain, personal, and legal); (iii) causation; (iv) attribution of fault (whether subjective or, exceptionally, objective).

    - Claimants can allege **strict liability** under the theory of dangerous activities. In *Tahami & Cultiflores*,[148] the Supreme Court applied the 'polluter pays' principle and granted relief to a claimant after the defendant's 'alteration of the environment' resulted in three avalanches that affected a nearby dam and flooded the claimant's crops. This case is relevant here because the Subsidiary Co's leak flowed into local rivers and destroyed crops.
    - Depending on the facts of the case, including Subsidiary Co's design of the pipeline, claimants may cite as relevant case law the *Machuca* case (see the ***Machuca*** case highlighted after [10] above).

79. Parent Co can be linked to the case in four ways: (i) showing that Parent Co was directly involved in the actions that led to the leak and pollution, in which case it would be jointly and severally liable (ie in terms of 'co-authorship'); (ii) the parent and subsidiary company can be held to be co-guardians of (and therefore jointly and severally liable for) a dangerous activity; (iii) if Subsidiary Co's assets are insufficient to meet the remedies, claimants could argue that Parent Co should be secondarily liable as long as they can prove that Parent Co's actions led to Subsidiary Co's insolvency; (iv) piercing the corporate veil, although it does not seem like a viable avenue in Case Scenario 2.

80. **Statute of limitations.** The local community will have to sue within ten years of the oil spill or of the date on which they first noticed the harms.

### Constitutional class action

81. As mentioned in [18] above, a CCA is available for a group of twenty or more claimants who seek reparation for economic and non-economic damages sustained individually by each member of the group. Here, twenty or more claimants of the local community can accumulate their claims and sue Subsidiary Co (and Parent Co, with the limitations explained above) within two years of the oil spill.

**If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.**

82. Historically, civil claims have not been the preferred route to hold perpetrators like those in Case Scenario 2 to account in Colombia. Other legal avenues available to the local population include suing in contentious-administrative courts. Many Colombian utility providers are at least partly publicly owned, which explains why contentious-administrative courts end up having exclusive jurisdiction over some relevant cases.

148 Supreme Court of Justice. Civil Cassation Chamber. Filing 05001-31-03-001-2015-00658-01. SC3460-2021. 18 August 2021. Luis Armando Tolosa Villabona.

83. Affected communities may also seek an injunction to prevent future environmental harm through a ***tutela*** action. If Subsidiary Co operates without free, prior, and informed consent of affected ethnic communities, a common legal practice is to start a *tutela* action and try to force the company to leave the territory. It is also possible to present a *tutela* or a PA for the protection of the environment, and to ask for injunctive relief and preventive measures. Even if courts take longer to reach a decision, PAs have fewer procedural issues than a *tutela* which is an action of last resort.

## Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?

84. The Superintendency of Corporations has lifted the corporate veil in various cases, such as *Finagro v Grupo Empresarial Mónica Colombia*;[149] and *Panavías Ingeniería & Construcciones S.A. v Agro Repuestos S.A.S.*[150]

85. Some CCAs have resulted in reparations for environmental harm, such as *Leonor Buitrago Quintero et al. v Alcaldía de Bogotá (Doña Juana)*.[151]

86. An extra-contractual civil liability case which resulted in reparation in the context of dangerous activities is *Jose Crispin Sanchez Rodriguez et al. v Sociedad Oleoducto Central S.A.(OCENSA)* (the ***Machuca*** case highlighted after [10] above).[152]

87. In two cases the lawsuit was successful but civil claims were not the preferred avenue: *Fundepúblico et al. v Dow Química de Colombia S.A.*[153] and *Pueblo Zenú v Empresa Cerro Matoso S.A.*[154]

88. Other relevant cases are: *Cámara de Comercio de Barranquilla v Carcos Mantenimiento de Equipos S.A.S.*[155] and *Harold Alberto Botero Hoyos et al. v Juan Carlos Alonso de Celada Correa, JAC La Esmeralda S.A.S. & Condival S.A.S.*[156]

149 Superintendency of Corporations. Sentencia No 801-64. 21 October 2014.

150 Superintendency of Corporations. Sentencia No 800-122. 11 December 2017.

151 Council of State. Contentious-administrative Chamber. Third Section. Filing 25000-23-26-000-1999-00002-04. (AG). 13 February 2013. Enrique Gil Botero.

152 Supreme Court of Justice. Civil Cassation Chamber. Filing 05736-31-89-001-2004-00042-01. SC5686-2018. 19 December 2018. Margarita Cabello Blanco.

153 Constitutional Court. T-080/2015. Jorge Iván Palacio Palacio.

154 Constitutional Court. T-733/2017. Alberto Rojas Ríos.

155 Superintendency of Corporations. Auto No 801-17366. 10 December 2012.

156 Superintendency of Corporations. Sentencia No 2019-01-372391. 15 October 2019.

# Case Scenario 3

**Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.**

## Claims against Factory Co

89. Workers affected in this case have two main legal avenues at their disposal. These are regulated under different theories of liability, and claimants can generally use them simultaneously depending on the facts. First, workers can claim social security benefits regarding workplace illness or accidents through the social security system without having to prove the employer's fault or negligence. If the employer did not enrol the worker in the Labour Risk Social Security System, workers can present a claim asking for the employer to cover the benefits that the worker would otherwise have received from the system. Second, if the worker believes that the employer was at fault, the worker can bring a claim against the employer in the labour courts, asking for full compensation.

### Social Security System

90. As explained above in [15], in cases of workplace illness or accident, social security protection should apply.[157] The concept of workplace illness or accident is essential: if the case can be classified as one of these scenarios, the worker or their family could claim the benefits of the Labour Risk Social Security System. In such cases, the worker has the right to two kinds of benefits: healthcare costs and economic compensation, both regulated by Law 100 of 1993 and Law 1562 of 2012. Regarding labour-related accidents, a worker or their family must only prove its occurrence to receive the benefits from the Labour Risk Social Security System. According to article 3 of Law 1562 of 2012, a labour accident is a sudden event that produces in the worker a bodily injury, a functional or psychiatric disorder, a disability, or death. The definition applies if such an event occurs (i) in relation to the work; (ii) during the execution of orders by the employer; (iii) during the worker's commute to or from the workplace if transportation is provided by the employer; (iv) during labour union work (in determined circumstances a unionist leader can receive leave to fulfil its duties, that is called '*permiso sindical*', which we have translated as labour union work); or (v) during recreation activities on behalf of the employer.

157 Art 216 of the Labour Code (n 17) refers to the liability regime incurred by the employer for the damages caused by his negligence to the worker. The Supreme Court interpreted that, when a specific breach of the obligations of care and safety on the part of the employer is proved, their fault is presumed.

91. Normally, the Labour Risk Administrator would cover all benefits. However, if the employer did not register the worker in the system (a mandatory requirement), the employer is liable. If Factory Co did not register its workers, the workers or their families would be able to sue the company in the labour courts to claim the benefits that they would otherwise have obtained from the Labour Risk Administrator. To be successful, the claimants would need to prove the facts, that is, the work relationship, the events, its qualification as a workplace accident and, if necessary, their relationship with the worker.

**Labour jurisdiction**

92. Besides the social security claims, claimants could sue Factory Co in a labour court alleging Factory Co's liability in the workplace accident. In this case, fault liability would be an applicable standard. The worker or their family would have to prove all the elements of liability as well as intent or negligence. If the accident was caused by an action, the claimant must prove: (i) the occurrence of the action; (ii) the harm; and (iii) the causal link between the action and the harm. If the accident was caused by an omission, the claimant must prove: (i) the omission that caused the breach; (ii) the harm; and (iii) the causal link between the breach and the harm. According to article 488 of the Labour Code, the claim would have to be filed within three years.[158]

93. Workers and their families could sue Factory Co directly and seek compensation beyond the benefits recognised by the Labour Risk Social Security System. Given that the case involves omissions by the employer, the claimants would have to prove the harm (injury or death, depending on the case), and the causal link between the omissions and the harm, as well as fault.

## Claims against Brand Co

94. Colombian legislation would not allow a claim against Brand Co for the accident and resulting harm solely by virtue of Brand Co being a buyer of Factory Co's products. Nonetheless, workers, family members, union members, and activists could employ advocacy strategies, such as pushing for the company to modify its market position, demanding better labour conditions from its vendors, etc.

**If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?**

95. The preferred action would be a combination of claiming Labour Risk Social Security benefits in conjunction with suing Factory Co under a standard of fault liability in the labour courts. However, workers can also file criminal complaints against the individuals responsible for the crimes such as bodily injury (in the case of the 58 injured workers) and negligent homicide (in the case of the 76 killed workers).

158 It is important to note that the starting date for the three years will vary according to the facts of the case. In general, the Labour Chamber of the Supreme Court of Justice has stated that the period starts on the date on which the consequence of the accident became clear. Supreme Court of Justice. Labour Cassation Chamber. Filing 58378. SL1463-2018. 2 May 2018. Carlos Arturo Guarín Jurado.

Once the criminal procedure has ended, if there is a guilty verdict, victims can propose a reparations scheme in the terms explained in [20] above.

## Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?

96. Litigation regarding harmful or unfair labour conditions usually takes the form of individual cases presented by a worker or their family members. One example is a decision of May 2020 in which the Labour Chamber of the Supreme Court of Justice ruled on a cassation appeal regarding a claim presented by the family of a worker who died as a result of a workplace accident. The family alleged that the defendants, one of the most important retail companies in the country and a labour cooperative, were negligent and at fault for the worker's death because of the lack of preventive measures and the non-fulfilment of safety rules.[159] The Court ruled in favour of the claimant and against the defendant companies.

159 Supreme Court of Justice. Labour Cassation Chamber. SL1565-2020. 27 May 2020. Martín Emilio Beltrán Quintero. A similar case is one concerning a fatal accident that a worker suffered while doing work at heights: Supreme Court of Justice. Labour Cassation Chamber. SL9355-2017. 21 June 2017. Clara Cecilia Dueñas Quevedo.

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