Judgment C-1199/08

INCONSTITUTIONALITY APPLICATION - Charges related to interpretation of rules / **INCONSTITUTIONALITY** APPLICATION **FOR LEGAL INTERPRETATION -** Exceptional **Relevance** / **CONSTITUTIONAL** ART **- Jurisdiction / INCONSTITUTIONALITY APPLICATION -** Court's jurisdiction to hear charges over interpretation of rules.

It is clear that through the filed charges it is intended that this corporation pronounce, not directly on the constitutional validity of the legal texts demanded, but on the interpretation that could be made of them, as well as on the eventual adequacy or not of such interpretations with the superior text, having pointed out that it is not feasible to make a constitutional judgment against the concrete applications of the legal norm demanded, nor against the interpretations that could eventually be made of it, impossibility that obeys to several circumstances: on the one hand, that the mission of preserving the integrity and supremacy of the Constitution which is the responsibility of this corporation must be fulfilled "in the strict and precise terms" of article 241 above, a precept which gives it no power in this regard; and on the other hand, that the interpretation of the meaning of legal norms corresponds to the judicial corporation which in each case exercises the functions of a borderline body for the matter in question, i.e., the Supreme Court of Justice or the Council of State, as the case may be. However, in some cases this corporation has accepted the possibility of pronouncing on the enforceability of the interpretations that legal operators may make of the legal norms, only when the questioned interpretations clearly and notoriously entail a problem of a true constitutional nature, having emphasized the clearly exceptional nature of this circumstance.

REQUEST FOR INCONSTITUTIONALITY-Minimum Requirements/REQUEST **FOR INCONSTITUTIONALITY OF LEGAL INTERPRETATION-Requirements** for greater argumentative burden on the plaintiff/REQUEST **FOR** INCONSTITUTIONALITY-Substantial procedural **burden** of clearly defining how interpretation violates the Constitution.

The Court has emphasized that in cases in which the interpretation of a norm is demanded, the minimum requirements that, within the framework of Article 2 of Decree 2067 of 1991, the jurisprudence has understood as necessary and indispensable to undertake an analysis of constitutionality, remain fully applicable and in force, and has emphasized that in these cases there is an even greater burden of argument on the plaintiff than usual, in order to demonstrate, in addition to compliance with the aforementioned criteria, the clear viability of the interpretation(s) criticized, as well as the constitutional implications that it involves.

INCONSTITUTIONALITY DEMAND-Constitutional interpretation **problem**

INHIBITION OF THE CONSTITUTIONAL COURT FOR SUBSTANTIVE INEPTITUDE OF THE CLAIM-absence of relevance and certainty in the charges

The charges in which the actors question the possible unconstitutional interpretations that could result from the concept of "national reconciliation", included in the text of articles 2, 4 and 48 of Law 975 of 2005, as well as the expression "shall implement an institutional

program of collective reparation", which is part of the text of article 49 of the same Law 975 of 2005, notwithstanding the fact that the application in relation to such charges has been admitted, since the formal requirements laid down in Article 2 of Decree 2067 of 1991 have been met, the Chamber considers at this point that the conditions necessary to make possible the constitutionality trial which is being held on the basis of those charges have not been fully met. In particular, it is observed that these glosses do not properly comply with the criteria of certainty and relevance, since it is not found that they contain a real and existing legal proposal that derives directly from the text of the norms under attack. On the contrary, it seems notorious that in both cases there is criticism of something that the norms do not actually say, and with respect to the lack of pertinence of these two charges, the Court emphasizes that the accusations "that are formulated from purely legal and doctrinal considerations, or those that are limited to expressing subjective points of view in which 'the plaintiff in reality is not accusing the content of the norm but is using public action to resolve a particular problem, such as the improper application of the provision in a specific case' do not comply with this criterion, as could be the improper application of the provision in a specific case.

DEMAND FOR INCONSTITUTIONALITY OF LEGAL INTERPRETATION-Improcedence to adduce the content of regulatory decrees as indirect evidence of questioned interpretation.

There are several substantive reasons related to the legal nature of the regulatory decrees, among them: i) that since the law and the decree are rules that are issued by different authorities, it could not be argued that the content of the latter serves to infer the scope and real intention of the legislative body that issued it; ii) that in its true sense, the regulatory power is not a valid tool for interpreting the laws, but only a mechanism for instruction by the supreme administrative authority to the other members of the executive branch on the best way to execute them; iii) in direct agreement with the previous point, that the mechanism of interpretation of the laws through other norms foreseen by the Political Constitution is fundamentally the expedition of a new law on the part of the Congress of the Republic; iv) that coming from a different authority to the legislative organ, the regulatory decree could well exceed or alter the authentic content of the regulated law, case in which it is possible to request its nullity before the jurisdiction of the administrative contentious.

SENTENCE CONDITIONED AS SUBSIDIARY PRETENSION-Improcedencia ante inexistencia de cargo sustentado

LAW-Fixation of the date on which it becomes effective is the competence of the legislator/LAW-Competence for the determination of validity/VIGENCE **OF THE LAW/VIGENCE OF THE LAW-Application** of the supplementary rule of the Political and Municipal Regime Code due to the lack of express disposition of the legislator/VIGENCE **OF THE LAW-Atribution** of the legislator to determine modality.

This corporation has pointed out that given the absence of a constitutional norm that regulates the issue, the determination of the date of entry into force of a law is a matter for

the legislator alone, taking into account the analyses of convenience and opportunity that it is incumbent on the legislator as representative of society and its various interests, against which it is not possible for the constitutional judge or other authority to question the meaning of its decision. Within this autonomy, the legislator may adopt any rules of entry into force, from the time the law is immediately sanctioned or promulgated, until it begins several months or years later. It may also provide for a staggered or fractionated term, for different chapters of the standard or for specific precepts. In the absence of a precise indication of the legislator determining the entry into force of the law within the text of the law, legal rules of a supplementary nature are applied, according to which the observance of the law begins two months after the date of enactment.

REQUEST FOR INCONSTITUTIONALITY ON THE EFFECTIVENESS OF THE LAW - Exceptional **origin**

Only in very exceptional cases in which the rules established by the legislator, related to the validity of the law, generate a situation of discrimination or directly and unjustifiably affect another rule or superior value, could the constitutional judge question them or order the inexequibilidad of such rules.

EFFECTIVENESS AND EFFECTIVENESS OF THE STANDARD-Conceptual **Distinction**

Validity is an attribute of a formal nature, and relates to the time during which the norm is imperative. The validity begins on the date or time determined by the legislator, which must, in any case, be subsequent to the conclusion of the procedure constitutionally required for the issuance of the law and its necessary publication for the knowledge of its addressees; the validity ends with the repeal of the rule, or in its case, with the declaration of inexequibilidad, which entails its expulsion from the legal system. What is different is effectiveness, that is, the real possibility of executing it, projecting its imperative mandates to the resolution of a specific case. The effectiveness of the rule is therefore a relative attribute, which depends on full compliance with the assumptions, both material and personal, and even temporary, to which, by the will of the same legislator, its applicability is subject. Thus, it may happen that a legal provision formally in force is not as effective, because the factual criteria to which the same rule has conditioned its application are not fully met, or that an effective precept, and in principle applicable, is not effective with respect to a given subject, because the material and personal assumptions necessary to claim such application are not met at its head.

VIGENCE SET IN JUSTICE AND PEACE LAW-No effect on transitional justice model, victims' rights or right to peace

The rule on the validity of Law 975 of 2005 that the legislative body established in Article 72, according to which all the provisions of this law govern from the date of its enactment, does not violate the transitional justice model, the rights of the victims developed by the jurisprudence of this corporation, nor the right to peace, reason for which it is clearly enforceable, but before the possibility that some legal operators could interpret that by the fact of having been temporarily in force according to this rule, the provisions of Law 975 of

2005 that this corporation has declared unconstitutional or of conditional exequibilidad, and can still be applied in development of the principle of favorability, the Court will declare, in the operative part of this ruling, that the normative segment accused is exequible, on the understanding that the right to the benefits contained in Law 975 of 2005 is subject to full compliance with the requirements set forth in the same Law, in accordance with the interpretation that this corporation has made of them in its pronouncements.

RIGHTS OF VICTIMS TO TRUTH JUSTICE AND REPAIR IN JUSTICE AND PEACE-SCOPE LAW

The Court has highlighted the importance of the rights to truth, justice and reparation, which have their own specific content within a context of transitional justice. Although these rights do not exhaust the catalogue of victims' rights, they constitute the backbone of these guarantees: "... truth, justice and reparation are erected as cardinal goods of any society that is founded on a just order and peaceful coexistence, among which mediate relations of connectedness and interdependence, in such a way that...: It is not possible to achieve justice without truth and it is not possible to achieve reparation without justice."

INTEGRAL REPAIR OF VICTIM IN JUSTICE AND PEACE-Content LAW

As a result of an extensive analysis, the Court stressed that reparation: i) includes all actions necessary and conducive to making disappear, to the extent possible, the effects of the crime; ii) like the concept of victim, has both an individual and a collective dimension; iii) is not exhausted in its purely economic perspective, but has diverse manifestations, both material and symbolic; and iv) is a responsibility that mainly concerns the perpetrators of the crimes that give rise to it, but also the State, particularly in relation to some of its components.

RIGHT TO THE REPAIR OF THE VICTIM IN THE LAW OF JUSTICE AND PEACE-Performances comprising

The right to reparation in the law of justice and peace has its own content, which derives from the text of its article 8, a rule that, although it does not define the concept of reparation, if it refers to the different types of benefits that it encompasses, when it is established: "The right of victims to reparation includes actions that promote restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition of conduct", noting that not all components of the concept of reparation have economic content, with rehabilitation being one of the aspects that make up the concept of reparation, which refers to actions that seek to restore the health of victims, including both purely somatic aspects, as well as those related to their emotional well-being or mental health, aspects equally necessary to live and develop a dignified existence; Hence, it can be asserted that all rehabilitation actions carried out within the framework of this law are considered acts of reparation, but not vice versa.

REPARATION IN JUSTICE AND PEACE LAW-Subsidiary State **Reparation**

SOCIAL GOVERNMENT SERVICES-Scope of **expression/SOCIAL GOVERNMENT** SERVICES-Permanent social policy **activities**

Although the term social services does not appear under that same text in any article of the Constitution, the Court may infer the scope of the expression, understanding it as activities of a permanent and habitual nature, carried out by the State or under its coordination or supervision, aimed at satisfying the general needs of the population, particularly those related to the rights to which the Constitution attributes a social character, or whose provision gives rise to public social expenditure, such as those related, by way of example, to the care of needs in health, education and/or housing.

SOCIAL GOVERNMENT SERVICES HUMANITARY AID AND VICTIMS REPAIR-Constitute differentiable duties and **actions/SOCIAL GOVERNMENT** SERVICES **HUMANITARY AID AND VICTIMS REPAIR-Distinction**

The Court recognizes the conceptual separation existing between the Government's social services, humanitarian assistance in the event of disasters, and reparation to victims of human rights violations, which although they are clearly differentiable duties and actions, in relation to their source, frequency, recipients, duration, and various other aspects, it is accepted that none of these actions can replace another, to the point of justifying the denial of a specific benefit owed by the State to a specific person, based on the prior granting of another benefit(s) of a different source and purpose. Thus, although a relationship of complementarity and mutual impact can be established between the Government's social services and the actions aimed at reparation due to the victims, which even makes it possible to accept that in certain cases the simultaneous execution of both types of actions occurs, it is not possible, on the other hand, to consider that the former can replace the latter, precisely because of their different reason and intentionality, as well as the different legal title that originates the former and the latter. Social services and reparation actions are the responsibility of clearly differentiated subjects, the former attending to the fulfillment of state obligations, while the latter correspond to the subjects responsible for the crimes whose commission gives rise to the need for reparation, and subsidiarily to the State.

RIGHTS OF VICTIMS TO INTEGRAL REPAIR IN JUSTICE AND PEACE LAW-Affectation by rule that includes social services provided by the government within the concepts of repair and rehabilitation.

The accused normative segment it establishes: "The social services provided by the government to victims, in accordance with the regulations and laws in force, are part of reparation and rehabilitation" contained in the second paragraph of article 47 of Law 975 of 2005, has the effect that the reparation due to victims is reduced by the effect of the social services they have benefited from, to the point that in specific cases some victims might not receive any sum or benefit for reparation, and even that some of them were, paradoxically, debtors of the government that had provided the aforementioned services, which would harm the victims' right to full reparation, within a context of transitional justice. In addition to the fact that it is inappropriate to state that government action, in the development of general duties incumbent on the State, can replace reparatory action that falls mainly on the perpetrators of the crimes, and that even though it can ultimately be carried out by the State from its position of guarantor, it has an ostensibly different nature.

Reference: File D-6992

Plaintiffs: Rodrigo Uprimny Yepes and others

Complaint of unconstitutionality against articles 2, 4, 47, 48, 49 and 72 (all partial) of Law 975 of 2005 *"By which provisions are dictated for the reincorporation of members of armed groups organized outside the law, which contribute effectively to the achievement of national peace and other provisions are dictated for humanitarian agreements"*.

Magistrate Rapporteur:
Dr. NILSON PINILLA PINILLA

Bogotá, D. C., cuatro (4) de diciembre de dos mil ocho (2008).

The Plenary Chamber of the Constitutional Court, in compliance with its constitutional powers and the requirements and procedures established in Decree 2067 of 1991, has ruled as follows

FEELINGS

I. BACKGROUND

In exercise of the public action provided for in Article 241 of the Constitution, citizens Rodrigo Uprimny Yepes, María Paula Saffon, Viviana Tacha, Pedro Santana, Carlos Rodríguez, Omar Hernández, Eduardo Cifuentes Muñoz, Luz Nelly Velandia, Alejandro Angulo Novoa, Liliana Silva Míguez, Jorge Arturo Bernal Medina, José Luciano Sanín Vásquez, Jaime Humberto Díaz Ahumada, Apécides Álviz Fernández and Esperanza González Rodríguez, all acting in the name and on behalf of various social organizations, applied to this corporation for a declaration of the unconstitutionality of certain expressions and subparagraphs in articles 2, 4, 47, 48, 49, 71 and 72 of Act No. 975 of 2005 *"whereby provisions are made for the reinstatement of members of organized armed groups outside the law who contribute effectively to the achievement of national peace and other provisions are made for humanitarian agreements."*

By order of October 22, 2007, the Substantive Magistrate adopted several decisions in relation to this lawsuit, namely: i) he admitted the fifth charge, related to the second paragraph of article 47 of Law 975 of 2005; ii) he rejected the first, second and fourth charges, directed against sections 2, 4, 48, 72 and 49 of the same law, and iii) he rejected the third charge,

referring to section 1 of article 71 ibidem, because it existed in relation to res judicata derived from the content of sentence C-370 of 2006.

Several of the plaintiffs filed an appeal against the rejection decision contained in the previous order, a determination that was confirmed by the Plenary Chamber of this corporation by order A-089 of April 9, 2008, with a presentation by Magistrate Humberto Antonio Sierra Porto.

Likewise, the plaintiffs proceeded to rectify the charges that were inadmissible, as a result of which, by order of June 5, 2008, the lawsuit was admitted in relation to them.

On the other hand, the same order of October 22, 2007 decided to list the present process and to transfer the matter to the Attorney General of the Nation to render the concept of rigour, diligences that were complied with once the appeal was resolved and the inadmissibility referred to was corrected.

It was also ordered to communicate the initiation of this process to the President of the Republic, the President of the Congress and the Ministers of the Interior and Justice, Finance and Public Credit and National Defense. Similarly, invitations were extended to the Attorney General of the Nation, the Ombudsman, the National Commission for Reparation and Reconciliation, the Colombian Commission of Jurists, the Colombian Academy of Jurisprudence, as well as to the law faculties of the Universities of Rosario, Externado de Colombia, Los Andes, Javeriana and Nacional de Colombia, so that, if they considered it pertinent, they could pronounce on the constitutionality or unconstitutionality of the precepts demanded.

Once the formalities for this type of process have been completed, the Court proceeds to decide on the request for reference.

II. THE STANDARDS DEMANDED

The following is the text of the rules accused, noting that the claim of unconstitutionality is directed against the highlighted parts of the text:

"Law 975 of 2005
(July 25)
Official Journal No 45.980 of 25 July 2005

By which provisions are made for the reincorporation of members of organized armed groups outside the law, which contribute effectively to the achievement of national peace and other provisions are made for humanitarian agreements.

COLOMBIA'S CONGRESS

DECREE:

(...)

ARTICLE 2. AMBITO DE LAW, INTERPRETACIÓN Y APLICACIÓN NORMATIVA. This Act regulates the investigation, prosecution, punishment and judicial benefits of persons linked to organized armed groups outside the law, as perpetrators or participants in criminal acts committed during and on the occasion of belonging to those groups, who have decided to demobilize and contribute decisively to ***national reconciliation****.*

The interpretation and application of the provisions of this law shall be carried out in accordance with the constitutional norms and international treaties ratified by Colombia. The incorporation of some international provisions in the present law should not be understood as the negation of other international norms that regulate the same matter.

The reinsertion into civil life of persons who may be favoured by amnesty, pardon or any other benefit provided for in Act No. 782 of 2002 shall be governed by the provisions of that Act.

(.....)

ARTICLE 4: RIGHT TO TRUTH, JUSTICE AND REPAIR AND DUE PROCESS. The process of ***national reconciliation*** *to which this law gives rise shall, in all cases, promote the right of victims to truth, justice and reparation and respect the right to due process and the judicial guarantees of the accused.*

(.....)

ARTICLE 47. REHABILITATION. Rehabilitation should include medical and psychological care for victims or their first-degree relatives in accordance with the Victims' Reparations Fund Budget.

Social services provided by the government to victims, in accordance with existing laws and regulations, are part of reparation and rehabilitation.

ARTICLE 48. SATISFACTION MEASURES AND GUARANTEES OF NON-REPETITION. Satisfaction measures and guarantees of non-repetition, adopted by the various authorities directly involved in the ***national reconciliation*** *process, should include:*

49.1 <sic> Verification of the facts and full and public dissemination of the judicial truth, to the extent that it does not cause further unnecessary harm to the victim, witnesses or other persons, nor create a danger to their safety.

49.2 <sic> The search for the disappeared or the dead and help to identify them and reburial them according to family and community traditions. This task is mainly carried out by the National Unit of Prosecutors for Justice and Peace (Unidad Nacional de Fiscalías para la Justicia y la Paz).

49.3 <sic> A judicial decision that restores the dignity, reputation and rights of the victim and

those of the victim's relatives in the first degree of consanguinity.

49.4 <sic> Apology, including public acknowledgement of the facts and acceptance of responsibility.

49.5 <sic> The application of sanctions to those responsible for violations, all of which will be the responsibility of the judicial bodies that intervene in the processes covered by this law.

49.6 <sic> The competent chamber of the Superior Judicial District Court may order commemorations, tributes and recognition of the victims of illegal armed groups. In addition, the National Reconciliation and Reparations Commission may recommend the adoption of this type of measure to the political or government bodies at the various levels.

49.7 <sic> Prevention of human rights violations.

49.8 <sic> Attending human rights training courses for those responsible for violations. This measure may be imposed on convicted persons by the competent chamber of the High Judicial District Court.

ARTICLE 49. COLLECTIVE REDRESS PROGRAMMES. The Government, following the recommendations of the National Reconciliation and Reparations Commission, ***should implement an institutional programme of collective reparation*** *that includes actions directly aimed at recovering the institutions of the Social Rule of Law, particularly in the areas most affected by violence; recovering and promoting the rights of citizens affected by acts of violence; and recognizing and dignifying the victims of violence.*

(.....)

ARTICLE 72. VALIDITY AND DEROGATIONS. This Act repeals all provisions to the contrary. It shall apply only to events that occurred prior to its entry into force and ***shall apply from the date of its promulgation****."*

III. THE LAWSUIT

As a result of the decisions and modifications referred to above, the lawsuit now decided presents four different charges of unconstitutionality, the one referring to Article 47 of Law 975 of 2005 as set forth in the original complaint, and the remaining three also taking into account the scope of the claims as defined in the remedy brief filed by the plaintiffs on October 29, 2007.

In the first place, and in general, the plaintiffs explain that the charges and claims they formulate are based on the assumption that the Constitutional Court has recognized that Law 975 of 2005, of which the provisions now being demanded are part, is an instrument of transitional justice, through which it seeks to balance the different needs of the members of a post-conflict society. They particularly refer to the need to reconcile the legitimate aspirations and expectations of the victims, including the prevalence of truth and the punishment of those

responsible, with the creation of conditions that make it reasonably attractive for them, submission and collaboration with justice, all with the aim of promoting the effective and sustainable realization of the right to peace. Based on this reflection, they propose that the constitutionality of the contents of Law 975 of 2005, which are now being demanded, be examined in the light of this concept.

Within this context, the actors affirm that the precepts demanded are contrary to the content of the preamble and to that of articles 1, 2, 16, 20, 22, 35, 93, 150, 179, 201, 229, 232 and 299 of the Political Constitution. They argue that the expressions demanded affect democracy as a fundamental value of the State, the right to justice as a value, an end and a subjective right within the Social Rule of Law, the right to peace, the right to autonomy, freedom of expression and the figure of political crime, with constitutional roots. They also consider that these normative segments infringe the block of constitutionality, applicable from the provisions of article 93 above, and specifically the rights to truth, justice and reparation.

With regard to the specific content of the proposed constitutional complaints, it should be noted that three of them (the first, second and fourth positions) have in common the fact of questioning the understanding and interpretation that can be made of certain expressions frequently used throughout the text of Law 975 of 2005. These are the concept of *national reconciliation,* mentioned in articles 2, 4 and 48 of this law (first charge), the rules on the validity of this law, contained in article 72 of the same (second charge), and the expression *institutional programme of collective reparation* (third charge), a subject mentioned in article 49 ibid.

Within this context, in relation to the concept of *national reconciliation,* the plaintiffs point out that there are different understandings ranging from the so-called *minimalist* notion*,* which would consist of the simple absence of aggressions or acts of violence, even if the enmities remain, to the *maximalist* one, which implies complete forgiveness and an almost friendly rapprochement between victims and perpetrators, both extremes that the plaintiffs understand as equally inconvenient, unsustainable and unconstitutional. Instead, they advocate what they call the *democratic* notion of national reconciliation, within which various types of relationships between victims and perpetrators can have a place and be equally legitimate, from those that involve an important punitive content over the latter, to those that involve a high degree of compromisability over these aspects, and therefore, a greater level of rapprochement between former adversaries.

In the case of article 72 of the partially challenged law, the plaintiffs maintain that this law *"admits an interpretation according to which all the provisions of this law entered into force as of its enactment"*, an interpretation that they consider erroneous since, they affirm, it is also possible to understand that Law 975 of 2005 has a staggered validity over time. They note that this last position is the one that seems to stem from the reasoning that this Court made when it issued Judgment C-370 of 2006, in which, by declaring several provisions of this same law to be unconstitutional, it refrained from giving retroactive effect to that pronouncement.

With respect to the *institutional program of collective reparation,* to which article 49 partially refers, the plaintiffs maintain that one of the possible understandings of this concept could

lead to the assumption that the obligations of reparation in charge of the National Government *"are restricted to, or at least privilege, mechanisms of collective and symbolic reparation over mechanisms of individual and compensatory reparation"*. The actors consider that this interpretation would be unconstitutional, as it unduly restricts the scope of the principle of integral reparation and excludes the possibility of individual reparation for each of the victims.

The plaintiffs seek to support the feasibility and conceptual validity of the interpretations they question as unconstitutional based on the content of some decrees issued by the National Government within the framework of regulatory power, in which the executive branch would have implemented the execution of the law based on such interpretations.

In view of the foregoing, and in accordance with the amendments contained in the statement of correction of the complaint to which reference was made earlier, what the plaintiffs are seeking in relation to these three issues is the declaration of unconstitutionality of those interpretations or ways of understanding the accused legal texts which, in their concept, are contrary to the content of one or more constitutional precepts. In the alternative, they propose that the same expressions should be declared purely and simply unconstitutional.

Finally, the fifth charge in the lawsuit, directed against the second paragraph of article 47 of Law 975 of 2005, seeks a declaration of the inexequity of that provision inasmuch as, in the view of the actors, the inclusion of the social services provided by the Government to the victims within the concepts of reparation and rehabilitation is erroneous and unduly restricts the scope of the latter concepts, to the detriment of the victims' rights.

IV. COMPETITION

From the point of view of article 241, paragraph 4, of the Constitution, the Court is competent to hear this lawsuit, since it is directed against texts that are part of a law of the Republic.

V. STRUCTURE OF THIS JUDGMENT

In view of the diversity and complexity of the charges filed and the number and extent of the interventions filed, the Court will address the study and resolution of those charges separately and successively, in the same order in which they were proposed in the application. In the development of this methodology, the consideration part of this judgment contains, for each case, a more extensive presentation on the scope of the charges filed, as well as a summary of citizen interventions and the concept of the Public Prosecutor's Office in relation to the respective issue. Subsequently, and on that basis, the Court makes its own considerations and concludes by announcing the decision it will take in the operative part.

However, taking into account the particular relationship between the first, second and fourth charges of the lawsuit, in all of which the Court is requested to declare the unconstitutionality of certain interpretations of the expressions accused and, only subsidiarily, the pure and simple inexequibilidad of the same texts, as well as the fact that several of the interventions received refer collectively and indistinctly to these three charges, this sentence presents them

and analyzes them consecutively, and even, as pertinent, simultaneously. Having evacuated these points, and developing the same proposed methodology, the Court takes care of the presentation, analysis and decision of the fifth and last position.

VI ANALYSIS OF DEMAND CHARGES

1. First charge: On the concept of national reconciliation

As mentioned above, the plaintiffs question some of the different possible understandings of the expression *national reconciliation,* which is part of the text of Articles 2, 4 and 48 of Law 975 of 2005, which is partially demanded. Before this consideration, they offer some examples of those interpretations that should be considered incompatible with the constitutional text and request the declaration of their unconstitutionality. In subsidy, they ask the Court to declare the pure and simple unconstitutionality of this normative segment in each of the cited norms.

Upon entering this position, the actors emphasize that national reconciliation is one of the main objectives of Law 975 of 2005, and is also a key element of any transitional justice system, a trend within which, according to the plaintiffs and, according to them, the Constitutional Court, the provisions of this law can be framed. They then refer to the interpretative difficulties raised by this concept, put forward three possible understandings of it, and analyse each of these concepts and their consequences in detail.

Initially, the demand develops the so-called *minimalist* notion of reconciliation, which states that it reduces this concept *"to forced tolerance or resignation",* in which the former actors in conflict commit themselves and strive not to attack each other, even when enmity, animosity, and even hatred between them, remain in force. According to the lawsuit, this form of reconciliation is unconstitutional because it is contrary to the principle of transitional justice, because it ignores the rights of the victims, which violates the content of article 93 above, and because it violates the right to peace, which is referred to in article 22 of the Constitution.

As for the principle of transitional justice, whose validity as a parameter of constitutionality is attributed to the aforementioned ruling C-370 of 2006 of this corporation, the plaintiffs explain the balance of two generally opposed values such as justice and peace, which cannot be achieved from the minimalist vision of reconciliation, since it sacrifices justice and the victims' rights to truth, justice and reparation, for the sake of an illusory peace. This is the same circumstance that brings with it the violation of article 93 of the Constitution, which integrates the rights of victims within the so-called block of constitutionality.

On the disproportionate importance attributed to the desired achievement of peace and the consequences of this circumstance, they cite the reflections made by this Court in Ruling C-370 of 2006, with support in which they affirm that this form of reconciliation also affects the constitutional right to peace, the realization of which is intended to be privileged through it. In the same way, they maintain that the democratic principle is damaged, since in this scenario there is not an authentic mutual recognition as citizens, but on the contrary, a persistent reciprocal disqualification between the old groups of victims and aggressors, context within

which true democracy is not possible.

Secondly, they refer to the so-called *maximalist* notion of reconciliation, which supposes forgiveness, the almost artificial forgetting of grudges and disagreements, and the supposedly supportive and friendly approach of the former adversaries, a situation which in the eyes of the plaintiffs is contrary to the same constitutional precepts to which reference was made earlier.

They explain that in this scenario the methods of restorative justice are put into practice, which for the sake of a supposed social peace, questions and disqualifies the aptitude of criminal punishment as an institution of justice aimed at achieving peace. They point out that this model is appropriate for the handling of small-scale crime phenomena, so that in the face of the purposes of the Justice and Peace Law it could perhaps have an efficient marginal application, but not constitute a basic paradigm of the penal system of a society in the process of reconciliation like Colombia, since its essence is intrinsically contrary to the principles of transitional justice.

For the same reasons, they affirm that the *maximalist* vision, by not demanding or even obstructing the prosecution of those responsible and the application of criminal sanctions, leaves the victims' rights to justice in the first place, but also to truth and reparation, since by their very nature, the latter involve the full investigation of criminal acts. They discuss the purposes of criminal punishment and the socially harmful effects of the phenomenon of impunity, including the feeling of lack of protection that invades the victims, as well as the latent danger of repetition of unsanctioned conduct, on the basis of which they maintain that this type of reconciliation is contrary to the right to peace, since it is based on unrealistic and shoddy foundations.

Finally, they add that the *maximalist* notion of reconciliation is based on the assumption that forgiveness is an irreplaceable element of peace, thus imposing on the victims an onerous burden, which is contrary to the principle of autonomy (art. 16 C. P.) and to human dignity (art. 1 ibid.). They also explain that the impossibility of disagreeing on the ways and means to achieve peace implies the disqualification as legitimate social actors of all those who are not able to forgive or build relationships of trust with their former aggressors, which in turn violates the democratic principle referred to above.

Finally, they present and explain what they call the *democratic* notion of reconciliation, which implies the recognition and integration of all citizens, from those who are capable of forgiving and dispensing with the punishment of those responsible for the crimes that have affected them, to those who, on the other hand, could demand the application of criminal sanctions, as well as from the perpetrators themselves. Within this context, the acceptance of the other and the commitment to dispense with violence are practiced, without this implying uniformity of feelings or unanimity around the paths to building peace, but on the contrary, the difference in feelings and the distance between the former adversaries are accepted as valid. It is therefore a scenario of diversity in which respect for the other makes civilized debate and lasting peace possible.

The charge concludes with the substantiation of how Law 975 of 2005, by not incorporating a precise definition of what is meant by reconciliation, allows it to be spontaneously understood from different perspectives, including those that in the previous paragraphs were presented as unconstitutional.

In the opinion of the actors, there is evidence that the reconciliation advocated by the partially demanded law has been understood especially from a *maximalist* perspective, which privileges the application of mechanisms proper to restorative justice, to which reference was made earlier. As the main proof of this fact, the actors refer to some of the norms issued by the National Government when regulating this law, and particularly to the provisions of Decree 3391 of 2006, which explicitly refers on several occasions to this type of approach.

On this point, the plaintiffs abound in explanations of how the aforementioned decree establishes mechanisms of purported reparation that involve the rapprochement between the victims and their former executioners, for example, joint participation in productive projects, and even the distribution between them of the product of such activities, with which part of the supposed reparation will increase the patrimony of the offenders, however, these mechanisms are presented as forms of reparation and reconciliation.

Based on these explanations, the actors support their request to declare unconstitutional the already explained interpretations of the concept of *national reconciliation,* or to decree the pure and simple inexequibilidad of the texts in which this expression is part of articles 2, 4 and 48 of Law 975 of 2005.

2. Second Charge: On the validity of Law 975 of 2005 as established in its Article 72.

As stated in the lawsuit, the second charge is directed against the rule that establishes the validity of Law 975 of 2005, *"for admitting an interpretation according to which all the provisions of this law entered into force as of its enactment*. The actors explain that in reality it must be understood that this law has a staggered validity over time, especially with regard to the prosecution of atrocious crimes. They also point out that the conclusion reached in relation to the entry into force of this law has important consequences with respect to the effects of ruling C-370 of 2006.

In accordance with what results from the correction of the lawsuit referred to above, they ask the Court to declare the unconstitutionality of this particular interpretation, and subsidiarily, to declare the pure and simple unconstitutionality of the text being sued.

Initially the actors make a general presentation on the rules that ordinarily determine the entry into force of laws. In this regard, they explain that although as a general rule the laws are in force from the moment of their enactment, the legislator may establish a different rule, including the so-called staggered validity. They add that for this it is not necessary to make an express pronouncement, normally in the last article of the respective law, but that this may result unequivocally from the rules contained in the different articles of the law, in which suspensive conditions are raised without whose verification one or more rules may not enter into force.

In relation to this same issue, they refer to two cases in which this corporation conditioned the enforceability of legal norms subject to its control with respect to the date on which such laws should enter into force, considering that the rule established by the legislator was unconstitutional.

Next, they state that article 10 of the partially challenged law contains a rule that causes the staggered validity of this law, which is the sending of a list that the National Government had to send to the Attorney General's Office with the names of those persons who, because they are members of an organized armed group outside the law, have been or may be charged, accused or convicted for the commission of criminal acts committed during and on the occasion of belonging to those groups. According to the plaintiffs, since the sending of this list has the important effect of determining which persons may have access to the criminal benefits provided for in this law, such sending must be understood as a condition precedent upon whose verification the entry into force of an important number of articles of this law depended at the time.

The actors stress that during the time between the enactment of the law and the sending of this list it was absolutely uncertain which persons would have the right to access these benefits, which impedes the consideration that such rules were in force.

As an argument that would reinforce the validity of this analysis, they draw attention to the fact that judgment C-370 of 2006 of this corporation did not consider it necessary to confer retroactive effects to the decisions of unconstitutionality and/or conditional exequibilidad contained therein. According to them, this decision would have been based on the fact that by that date the aforementioned list had not been sent, most of the provisions of Law 975 of 2005, which were then declared unconstitutional, never entered into force.

Based on the foregoing considerations, the plaintiffs explain that Article 72 of Law 975 of 2005 *could be interpreted differently,* understanding then that the validity of all its provisions began on the date of enactment of that law. They point out that this interpretation, in addition to being unreasonable and incorrect, can be catalogued as unconstitutional, since it makes it possible, by virtue of the principle of favorability, to claim the application of provisions that were declared unconstitutional by judgment C-370 of 2006, under the argument that such rules were in force for almost a year, between July 2005 (date of enactment of the law) and May 2006 (date on which judgment C-370 of that year was pronounced).

The unconstitutionality preached in this case by the actors would imply, in their concept, ignoring the principle of transitional justice for Colombia, violating the rights of victims, and injuring the right to peace, enshrined in Article 22 of the Political Constitution. In addition, they argue that the higher principle of criminal favourability would also be violated, since that principle only applies to rules that have entered into force, which, they insist, did not happen in this case.

The violation of the principle of transitional justice would be given by the fact that the ultra-active application of norms that have previously been declared unconstitutional would bring

with it the breaking of the necessary balance that in these cases must be sought between the values of justice and peace.

In the meantime, the violation of the rights of victims, the validity of which derives from the block of constitutionality and the right of access to the administration of justice (arts. 93 and 229 C.P.), would be caused by the fact that allowing the application of norms that at the time were declared unconstitutional by reason of their opposition to these principles would produce a new violation of those same rights. On the other hand, according to the actors, the right to peace (art. 22) would be affected to the extent that an alleged harmony achieved under the conditions described above would leave many open wounds and, therefore, would not be sustainable in time.

With regard to the principle of criminal favorability, the plaintiffs explain that this principle must be understood to be affected in the event that it is applied to situations other than those for which it was foreseen, which is the situation that could be generated if an interpretation of article 72 is assumed according to which it is understood that all the provisions of Law 975 of 2005 came into force from the date of its enactment. This is because this last assumption would make it possible to invoke, under the protection of favorability, the application of rules that before coming into force were declared unequitable or only conditionally exequable, and that therefore never had real validity in their original versions, a necessary budget for favorability to be invoked.

On the basis of these considerations, the plaintiffs maintain that the text of article 72, defendant in this case, cannot be understood according to its literal meaning, and that such a reading must be considered unconstitutional.

3. Fourth Position: Concept and Scope of the Institutional Collective Reparation Program

In this charge the plaintiffs refer to the different interpretations that can be made with respect to the scope of the government's obligation to implement an institutional program of collective reparation, in accordance with the mandate contained in Article 49 of Law 975 of 2005. In relation to this issue, they request the Court to declare the unconstitutionality of some of these interpretations and, subsidiarily, to declare the plain and simple unconstitutionality of the text being challenged.

They emphasize that based on the concept of a constitutional block, and according to what the Court stated in Ruling C-370 of 2006, the reparation of victims of atrocious crimes must be integral, so that it includes different types of measures (material and symbolic, individual and collective, judicial and administrative), aimed at the reparation of each and every one of the different damages caused by the crime. From this perspective, the actors affirm that there is even a subsidiary responsibility at the head of the Government for everything that, due to insufficient available resources or for other reasons, is not completely repaired by the perpetrators. They then explain the particularities of the different types of reparation contemplated in Law 975 of 2005 and comment on the difficulties that may affect the real possibility of obtaining reparation through the courts, as well as the relative greater equity and

effectiveness of reparation through administrative channels, at the expense of the Government.

Faced with these circumstances, the plaintiffs maintain that the standard demanded allows for an interpretation according to which greater importance will be given to acts of symbolic reparation than to individual reparations, and it is even possible that in some cases reparation is restricted exclusively to acts of a symbolic and collective nature. They argue that one of the main purposes of this restrictive vision is the desire to contribute to the fiscal savings that the Government is so concerned about, in the face of which it considers it disproportionate to privilege the saving of public resources over the enormous transcendence and social impact that an insufficient reparation would generate. On the other hand, also in this case, they maintain that one of the most reliable proofs of the viability of the interpretation criticized is the issuance by the Government of regulatory norms that give the concept of reparation this limited content, and in which it is established that there will be no subsidiary responsibility at the head of the State.

They explain that if this restricted understanding of what reparation for victims entails prevails, this aspect is of much less importance than the tax savings and/or criminal benefits that this law confers on perpetrators. According to the plaintiffs, this situation violates the principle of transitional justice and the victims' right to integral reparation, principles that, according to them, have been recognized by this Court as integral elements of the block of constitutionality, and consequently, reference parameters for the analysis of the enforceability of this type of norms.

Finally, as in the two previous charges, they maintain that this interpretation of the precept being sued would directly affect the constitutional right to peace dealt with in article 22 above, since the peace that could be achieved through the application of the institutions of this law would be notoriously fragile in the event that reparation is made only within this reduced perspective. In relation to this issue, they also say that the impact of the scope of reparation on the possibility of achieving peace has to do with the fact that the vast majority of victims who expect and deserve to be compensated belong to the marginalized or excluded sectors of society, before or beyond the fact of having been victims of acts of violence.

For this reason, the plaintiffs affirm, the integral reparation constitutes a unique opportunity to make possible the rescue of the dignity of these persons and the true exercise of citizenship by them, while a limited reparation in the manner already explained, derived from a restrictive interpretation of the defendant text would leave pending most of the elements required for the achievement and enjoyment of a lasting and sustainable peace.

4. Citizen Interventions against the First, Second and Fourth Charges

Several institutions, both public and private, came during the term of fixation in list to pronounce, in very diverse forms, in relation to these positions. In the following paragraphs, the Court presents an excerpt from each of these interventions.

The **Legal Secretary of the Presidency of the Republic** made, in the first place, general

reflections on the content of these positions. It states that, in its opinion, the plaintiffs did not correct the application in accordance with the order of October 22, 2007, since they insisted on requesting that the Court make interpretative statements, which could only be considered on its own initiative. Although it does not make any specific request in relation to these charges, it reiterates that the necessary conditions would not be met for this corporation to decide on them, despite which, it makes the following comments:

In relation to what was stated in the first charge, he affirms that the concept of *national reconciliation* has a natural and obvious sense, which makes it possible to rule out the interpretative controversies proposed in the lawsuit.

With respect to the second charge, it rejects the reasoning of the plaintiffs, and indicates that while it is true that the criminal benefits could not have been applied before the mailing of the list referred to in Article 10 of the partially accused law, this is different from arguing that the validity of a part of Law 975 of 2005 was conditioned to the fulfillment of this requirement. It also opposes the plaintiffs' reasoning against the principle of favourability, which it considers does not allow any kind of exception within the framework of the Constitution.

Finally, with respect to the fourth charge in the lawsuit, it considers that the text of article 49 should be interpreted jointly and harmoniously with the other provisions of Law 975 that refer to the content and scope of reparation to victims (citing articles 8, 43, 44, 46, 47 and 48), from which the integral nature of the reparation developed by this law can be appreciated in its concept. It further argues that the decrees issued by the National Government in relation to the issue reaffirm the completeness of the reparation rather than distort it.

The representative of the **Colombian Commission of Jurists** makes general assessments from which he supports the feasibility, as well as the unconstitutionality, of the interpretations of the norms demanded by the actors. Consequently, he advocates the prosperity of these positions.

Faced with the first question, related to the expression *national reconciliation*, this intervener adheres to the analysis of the plaintiffs and asks the Court to declare the conditioned exequibilidad of the precepts accused in the manner presented in the petition. In this regard, it recounts the obligations of the Colombian State within the framework of the American Convention on Human Rights, highlighting the need to investigate and effectively punish human rights violations and to provide reparation to victims. It affirms that the State *"cannot renounce minimums of truth, justice and reparation, not even in application of transitional justice mechanisms"*.

In this same line, it complements the exhibition of the actors around the maximalist and minimalist models of reconciliation, the institutions of restorative justice and the possible effects of both. It also delves into the content of Decree 3391 of 2006, the issuance of which by the National Government would demonstrate the feasibility of interpretations that are criticized as unconstitutional and the spontaneity with which they may arise.

In relation to the second charge, this intervener adheres to the statements of the plaintiffs and

reiterates several of them, stressing that by effect of the provisions of Articles 10 and 11 of this law, it cannot be assumed that all its provisions entered into force from the date of its enactment, as could be erroneously understood from the text included in the final part of its Article 72. Likewise, it also maintains that the conditions would not be met for the persons included in such lists to invoke the principle of favorability, and that accepting that approach under the interpretation of the defendant text criticized by the plaintiffs violates the superior norms and principles to which they refer, especially those that served as support for the decisions of unequibilidad or conditional exequibilidad contained in judgment C-370 of 2006.

Finally, before the fourth charge of the lawsuit, relating to the interpretation that could be made of a segment of article 49, regarding the scope of the Institutional Program of Collective Reparation to which that norm refers, the interveners also support the saying and the requests of the plaintiffs. To this end, they bring up extensive reflections of the Inter-American Court of Human Rights, as well as documents of the United Nations, which advocate for the comprehensive nature of reparation due to victims, emphasize the need to look at reparation from the perspective of the victim and not from that of the perpetrator, and emphasize that the different forms of reparation are complementary and eventually cumulative, and that they are not alternatives, as according to the actors, could be inferred from the interpretation of Article 49 partially demanded.

For his part, the representative of the **Ministry of the Interior and Justice** expressed his opposition to these charges and asked the Court to declare exequable, without conditions, all the normative segments accused in them.

In general, it rejects the possibility of declaring unconstitutional the rules demanded on the basis of the particular interpretations made of them by the plaintiffs. Likewise, it questions that the demonstration of the alleged unconstitutionality is made from the analysis of the regulations issued by the National Government, warning that the competence to decide on the constitutional validity of such interpretations corresponds to the jurisdiction of the contentious-administrative.

He added that if this approach were accepted, the right to peace referred to in article 22 of the Political Constitution would be subject to similar controversies, which is inadmissible. He adds that, apart from these discussions, the concept of reconciliation is useful and relevant within a transitional justice model such as that inspired by the institutions of Law 975 of 2005.

On the other hand, he highlights the benefits that in his opinion the concept of restorative justice has and points out that its institutions are not necessarily incompatible with those of transitional justice, a reasoning with which he intends to distort the inexequibilidad that the actors denounce in the concepts of *national reconciliation* that incorporate such models.

In relation to the second position, the representative of this Ministry contradicts the arguments of the plaintiffs, especially the premise that the law may contain, throughout its articles, provisions that implicitly alter or introduce exceptions to the rule on the validity of the rule directly expressed by the legislator. It also rejects the pertinence of the jurisprudential

citations brought by the actors, since in their concept they do not refer to the subject under debate, and instead states that, as explained in Ruling C-084 of 1996 (M. P. Carlos Gaviria Díaz), the date of entry into force of the law depends directly on the will of the legislator or, failing that, is governed by the provisions of Law 4 of 1913 which establishes it two months after the date of its enactment.

Regarding the precise effect to be attributed to the requirement contained in Article 10 of Law 975, partially accused, this intervener proposes a thesis, originally put forward by an Italian doctrinaire, which distinguishes between the concepts of existence, validity, validity, applicability and effectiveness of the rule. From the foregoing, it suggests that the rule established in Article 10 could have implications in the field of the applicability or effectiveness of the rule, but not in that of its validity, as the plaintiffs contend.

For these reasons, it rules out the possibility that article 72 may have a different reading than that resulting from its literal meaning, as well as the possibility that the existence of a single effective date for Law 975 is only a possible interpretation of said text, which is otherwise unconstitutional. It maintains that what the application really seeks is for the Court to alter part of the decisions adopted by judgment C-370 of 2006, specifically as regards the temporal effect of the inaccuracies decreed therein.

In front of the fourth charge, directed against the expression *"shall implement an institutional program of collective reparation"*, contained in article 49 of Law 975 of 2005, the intervener transcribes and comments on the other articles of this law that deal with the issue of reparation, with support in which he discards the thesis of the plaintiffs on the possibility that the questioned norm is interpreted in a restrictive way, that ignores the integral character of the reparation due to the victims.

Similarly, and although it reiterates its rejection of the possibility that the content of the regulatory decrees serve as a parameter to judge the enforceability of the legal norms regulated by them, the intervener analyzes the provisions of Decree 3391 of 2006, on the basis of which it maintains that the regulation demonstrates the integral conception of reparation that underlies the provisions of Law 975, and that the Government is implementing, in development of the recommendations made by the National Commission for Reparation and Reconciliation. In the same vein, it cites Decree 1290 of 2008, issued after the filing of the lawsuit that is now decided.

The **Ministry of Finance and Public Credit,** through a special representative, also participated to pronounce itself only in relation to the fourth position, on the scope of the Institutional Program of Collective Reparation. The intervener requests that that provision be declared to be enforceable.

In support of his request, he expresses his disagreement with the approaches of the actors in relation to this issue and maintains that only through an isolated interpretation of the text demanded could the understanding that they question be arrived at. Like other interveners, it points out that the regulations issued by the Government before and after the filing of the complaint provide sufficient tools for victims' reparations to be truly comprehensive, with the

participation of both the perpetrators and the State. Finally, it draws attention to the fact that although the plaintiffs maintain that the Colombian State is capable of assuming a higher fiscal cost for reparations to the victims, they do not offer specific explanations or calculations to support their assessment.
For its part, the **Ministry of Defence** presented a memorial in which extensive reflections are made on the origin, legislative procedure and content of Law 975 of 2005. This paper also includes a broad presentation of the contexts in which it is necessary and convenient to implement transitional justice mechanisms, from which it explains that Colombia is currently in that situation.

He then argues that Law 975, whose enforceability is discussed, is a fortunate experiment in the application of these models, whose specific mechanisms will allow the full validity of the principles of truth, justice and integral reparation. This assessment is based on the detailed analysis of several of the institutions developed by this law, including the requirement to immediately cease acts of aggression against the civilian population, the need for the leaders to commit to dismantling the groups they command, and the fact that the benefits of reduced penalties can only be accessed once the demobilization process has been completed.

At the conclusion of this presentation, and without referring directly to any of the different charges in the lawsuit, the intervener affirms that they do not meet the requirements necessary for the Constitutional Court to rule on them, since in her opinion the concept of violation is *"dispersed, inaccurate and vague"*.

It points out that this corporation has explained that the analysis of the charges carried out at the time of pronouncing sentence is different and of greater depth than that which takes place at the stage of admission of the lawsuit, so that the fact that it has been admitted does not prevent the Court from deciding to inhibit itself at this stage of the proceedings, considering that in reality the necessary conditions for a substantive decision are not met. On this subject, he quotes and transcribes some case law extracts.

However, in apparent disagreement with the foregoing considerations, the brief concludes by requesting the Court to *"declare the rule enforceable,"* without specifying to which of the challenged provisions it refers. Finally, with equal imprecision, it also states that this case would have operated the phenomenon of constitutional res judicata derived from Ruling C-370 of 2006, in which this corporation *"has already pronounced on some of the norms of those accused here, declaring them enforceable",* after which it cites and partially transcribes several pronouncements of this Court on the phenomenon of res judicata and its scope.

The **Corporación Nuevo Arco Iris** also ruled, only in relation to the first and fourth charges of the lawsuit, and concurred through its legal representative. It began by presenting a brief consideration of the work of that entity and the reasons from which its knowledge derives from the issues discussed here.

It points out that although Law 975 of 2005 could be understood as an instrument of transitional justice, its effective application faces important difficulties, since the majority of the Colombian population does not feel that the country is in a moment of transition, but in a

new phase of conflict.

Prior to this contextualization, in relation to the first charge, he adheres to the main reflections of the plaintiffs on the dangers of minimalist and maximalist forms of reconciliation, and by way of example, he points out that it would be unconstitutional, as well as unviable, a model of reconciliation based on the total forgiveness of the victims to the perpetrators and the obligatory closeness between them.

It asserts that in this case the legislator would have erred in promoting a process of reconciliation and establishing actions aimed at its achievement, without previously defining the scope of that concept. It also adds that, even though the regulatory power must be directed to the full execution of the law and not to its interpretation or complementation, the notorious gaps existing in Law 975 of 2005 have led to the too frequent exercise of this power, a circumstance that, in its opinion, contributes to demonstrate the interpretative difficulties to which the concept of *national reconciliation*, whose constitutionality is discussed, is subject.

Based on these considerations, he concludes by requesting the Court to declare "the unconstitutionality of articles 2, 4 and 48 of Law 975 of 2005 in relation to the notion of *national reconciliation"*.

Regarding the fourth position of the claim, it adheres to the considerations of the plaintiffs regarding the necessarily integral nature of the reparation, and maintains that the model foreseen in article 49, here partially demanded, does not comply with the international standards on the matter, which become a parameter of constitutionality of this type of norms, due to what is foreseen in article 93 above.

It points out that the legislator would have established an incomplete system of reparation, in which a good number of issues are not adequately developed, including those related to the specific purpose of reparation, the persons or entities obliged to repair, the scope of reparation measures and the time frame within which the reparation program to which the norm refers will be fulfilled. He adds that in the face of these omissions, it is not constitutionally acceptable for all these gaps to be filled by the National Government through the exercise of regulatory power, since this executive power does not have such purposes.

As a complement to the foregoing, it mentions some of the practical difficulties faced by the reparation process, both in the judicial and administrative channels, and criticizes the content of Decree 1290 of 2008, by which the Government created the Individual Administrative Reparation Program.

In conclusion, this intervener requests the Court to declare article 49 of Law 975 of 2005 unconstitutional.

On the other hand, once the term of the list had expired, the **Attorney General's Office**, the **Ombudsman's Office** and the **National Commission for Reparation and Reconciliation (CNRR)** submitted written interventions.

In relation to the first charge on the concept of national reconciliation, even though they did so on the basis of various considerations, all of these entities asked the Court to declare itself inhibited in deciding on the matter. The Attorney General's Office extended this request to all the charges in the lawsuit.

With respect to the second charge, the Ombudsman's Office proposed that the Court declare the defendant text to be conditionally exequibilidad, in such a way as to harmonize it with the decisions adopted in Ruling C-370 of 2006, and warning that only those persons who appear on the list referred to in Article 10 of this law may claim the benefits it establishes. Meanwhile, the National Commission for Reparation and Reconciliation asked the Court to dismiss this charge, which would be tantamount to declaring the accused text enforceable.

Finally, with regard to the fourth charge, relating to a segment of article 49 of the law being challenged, both the Ombudsman's Office and the CNRR asked the Court to declare the accused text enforceable.

5. The concept of the Attorney General as opposed to the first, second and fourth positions:

After making a brief summary of the content of the lawsuit, the Chief of Public Prosecutions begins by referring to the procedibility of the action that is now decided. To this end, it jointly studies the first, second and fourth positions, which it considers do not meet the requirements necessary for the Court to rule on the merits.

Previously, the Procurator analyzes the characteristics that the jurisprudence of the Court demands of the charges of unconstitutionality, emphasizing that those must be clear, certain, specific, pertinent and sufficient. It recalls that although it is a public action the exercise of which is not subject to complex formalities, it does not relieve the citizen plaintiff of the duty to comply with minimum requirements, on the basis of which he precisely poses a legal problem of a constitutional nature, and in the absence of which the Court could not decide on his application.

It also emphasizes that the control of constitutionality has an abstract character, which refers to the content of the rule itself and not to the application of it. Faced with the possibility of the Court ruling on specific interpretations of the text of a law, it specifies that although this is not impossible, it is a clearly exceptional situation, and it could occur only to the extent that the interpretations of questionable constitutionality have been made by the judges of the Republic when applying such rules. On the contrary, it explains that in the event that the interpretations that generate controversy are found in acts of a general nature issued by the National Government, it is appropriate to seek the nullity of such administrative acts before the competent jurisdiction.

Based on these reflections, it concludes that in the case of the first, second and fourth positions there is a true absence of positions, since none of them meet the necessary requirements, particularly those related to certainty and pertinence. Based on the transcription of some fragments of the lawsuit, he points out that the lack of *certainty* derives from the fact

that the interpretations criticized by the actors do not actually derive from the text of the law, but rather from the content of the regulatory decrees cited therein, so that the requirement to present real and existing legal proposals is not met. At the same time, the lack of *relevance* would derive from the fact that since the content of the regulatory decrees is mainly questioned, there is no real constitutional discussion on the content of the law.

At the end of these considerations, the Procurator concludes that *"the three accusations analyzed here are strange to the object and end of the judgment of inexequibilidad before the Constitutional Court and, therefore, such corporation will be asked to declare itself inhibited in order to pronounce itself with respect to them"*.

6. Considerations of the Constitutional Court versus the first, second and fourth positions.

As noted by the actors themselves, as well as by all the interveners, the study of these glosses is subject to the Constitutional Court previously accepting the possibility of undertaking the analysis of charges directed against specific interpretations of the texts being demanded.

Therefore, the Court will initially address this aspect, the considerations and conclusions of which are applicable, as mentioned above, to the analysis of the first, second and fourth counts of the complaint.

6.1. Procedural considerations of the charges. Reiteration of jurisprudence.

According to the document correcting the lawsuit filed by the plaintiffs on October 29, 2007, the three charges analyzed have in common the fact that the claim with which they conclude seeks the declaration of unconstitutionality of certain *"understandings"* of the expressions sued, which in the opinion of the plaintiffs would be opposed and incompatible with various constitutional provisions. The referred glosses also agree that each one of them raises, as a subsidiary pretension, the declaration of inexequibilidad of the expressions that in each case were accused.
In this way, it is clear that through the formulated charges it is intended that this corporation will pronounce, not directly on the constitutional validity of the legal texts demanded, but on the interpretation that could be made of them, as well as on the eventual adequacy or not of such interpretations with the superior text.

In view of this approach, it is pertinent to recall that, as has been repeatedly explained, the abstract control of constitutionality materializes in the direct, verifiable and objective confrontation of the legal text being sued with the constitutional precepts that the plaintiff considers infringed by the former. On the contrary, it has been pointed out that it is not feasible to carry out a constitutional trial against the concrete applications of the legal norm demanded, nor against the interpretations that could eventually be made of it, impossibility that obeys to several circumstances: on the one hand, that the mission of preserving the integrity and supremacy of the Constitution which is the responsibility of this corporation must be fulfilled *"in the strict and precise terms"* of article 241 above, a precept which gives it no power in this regard; and on the other hand, that the interpretation of the meaning of

legal norms corresponds to the judicial corporation which in each case exercises the functions of a borderline body for the matter in question, i.e., the Supreme Court of Justice or the Council of State, as the case may be.

Notwithstanding the foregoing, as indicated by the Attorney General, it is true that in some cases this corporation has accepted the possibility of pronouncing on the exequibilidad of the interpretations of the legal norms that can make the legal operators, only when in an evident and notorious way the questioned interpretations imply a problem of true constitutional nature. In all these cases, however, the clearly exceptional nature of this circumstance has been highlighted, the presence of which depends on the full and sufficient demonstration that the actor must make of the spontaneous feasibility of the interpretation in question and of the constitutional nature of the implications that may derive from it.

It has also been insisted on the fact that, in order to be subject to a constitutionality trial, the questioned interpretation must have a sustained and prevailing character, since it has been invoked in a uniform and repeated manner on a considerable number of occasions in which the defendant precept has been applied.

In the same pronouncements referred to above, the Court has also emphasized that in these cases the minimum requirements that, within the framework of Article 2 of Decree 2067 of 1991, the jurisprudence has understood as necessary and indispensable to undertake an analysis of constitutionality, such as the formulation of one or more charges that may be considered *clear, certain, specific, pertinent and sufficient*, remain fully applicable and in force. On the contrary, it has been emphasized that in these cases there is an even greater burden of argument on the plaintiff, in order to demonstrate, in addition to the fulfillment of the aforementioned criteria, the clear viability of the interpretation(s) criticized, as well as the constitutional implications that it involves.

Thus, it is from these parameters that the Court must analyze the procedibility of the first, second and fourth charges of the lawsuit, in which it is asked to rule on the enforceability of certain interpretations of the defendant texts.

6.2. Analysis of the objections made in the light of the criteria set out above.

Before addressing this point, it is necessary to remember, as this Court has often pointed out, that the analysis of the charges made by the Plenary Chamber at the time of deciding on the constitutional action proposed by the citizen differs substantially in terms of its depth and implications from that made by the substantive Magistrate during the first phase of the process, with a view to the admission or rejection of the lawsuit.

In this sense, while the initial scrutiny of the action brought certainly includes the study of the charges formulated on the basis of the criteria of clarity, certainty, specificity, relevance and sufficiency referred to above, the point of being able to order the dismissal or rejection of the claim if these requirements are not met, it is evident that the elements of judgment available for such analysis are considerably limited compared to those available once the process has been completed, especially after the concept of the Attorney General has been heard and that

of the citizens and/or organizations that would have manifested themselves within the term of the listing, and the case has been known by all of the Magistrates that make up this corporation. For all of the above reasons, the Court has repeatedly warned that the admission of the lawsuit does not prevent it from later concluding that in reality the necessary elements for a substantive pronouncement were not met, thus making an inhibitory decision inevitable.

6.3. The first and fourth positions do not qualify for a substantive decision.

Entering into the concrete analysis of these charges, it should be remembered that in the first of them the actors question the possible unconstitutional interpretations that could result from the concept of *"national reconciliation"*, included in the text of articles 2, 4 and 48 of Law 975 of 2005, for which they illustrate to the Court the diverse and very divergent approximations that can be had in relation to this concept. Simultaneously, both the original complaint and the correction brief refer to the regulatory decrees issued by the National Government in relation to this issue, the content of which would constitute, as stated in the second of these documents, *"the best example"* that *"these are interpretations derived directly from the text of the rules themselves, and not interpretations that have only been made by the plaintiffs"*.

For its part, the fourth charge in the lawsuit refers to the interpretations that could be given from the expression *"shall implement an institutional program of collective reparation",* which is part of the text of article 49 of the same Law 975 of 2005. For the actors, the risk of unconstitutionality consists in privileging collective and symbolic forms of reparation to the detriment of individual reparations of an administrative nature, to which, as explained, the victims of atrocious crimes are entitled.

In these two cases, and in spite of the fact that the lawsuit was admitted in relation to such charges, since the formal requirements established in Article 2 of Decree 2067 of 1991 were met, at this point the Chamber considers that the necessary requirements to make possible the constitutionality trial arising from them are not fully met. In particular, it is noted that these glosses do not adequately meet the criteria of certainty and relevance referred to above.

The Court finds that the aforementioned charges do not satisfy the criterion of *certainty* because, despite the argumentative efforts of the plaintiffs, they are not found to contain a real and existing legal proposal that derives directly from the text of the norms under attack. On the contrary, it seems notorious that in both cases there is criticism of something that the rules do not actually say.

In fact, it is not observed that the mere mention of *national reconciliation* within the text of those provisions (Articles 2, 4 and 48) contains, at least hypothetically, the extreme meanings which, according to the plaintiffs, could be derived from that expression, especially when, from a reading of the non-defendant sections of those texts, it is clear that the operative content of those rules could not be understood to be altered to the sway of the concept which the various legal operators have of national reconciliation.

In the same vein, the Court does not find that the duty imposed by Article 49 on the

Government to *"implement an institutional program of collective reparation"* can be understood as an authorization, not even an eventual one, to ignore other aspects of the concept of integral reparation, widely developed by other provisions of the same law.
On the other hand, and taking up again the concept of *certainty* referred to in the cited judgment C-1052 of 2001, the Court emphasizes that the accusations of unconstitutionality constructed on the basis of *"other norms in force that, in any case, are not the concrete object of the lawsuit",* as is the case of the regulatory decrees repeatedly cited by the plaintiffs as a demonstration of the notorious feasibility of the questioned interpretations, could not be considered true either.

Along the same lines, and with respect to the lack of *pertinence* of these two charges, the Court emphasizes that the accusations *"that are formulated on the basis of purely legal and doctrinal considerations, or those that are limited to expressing subjective points of view in which 'the plaintiff is not actually accusing the content of the norm but is using public action to resolve a particular problem, such as the improper application of the provision in a specific case' do* not comply with this criterion*;".*

Faced with this criterion, the Court emphasizes once again that these two charges rest mainly on doctrinal considerations regarding the concepts of reconciliation and integral reparation, as well as on the content of the regulatory norms issued by the Government, both of which prevent the aforementioned requirement from being fulfilled.

The criteria of *certainty* and *relevance* required by the case law are therefore not met in relation to them.

Finally, even though the foregoing considerations suffice to adopt an inhibitory decision with respect to these two charges, as in effect will be done in the operative part of this sentence, it is important to highlight the fact that the content of the regulatory decrees issued by the President of the Republic cannot be invoked in a case like this as indirect but reliable evidence of the actual content of the accused legal norm, nor of the feasibility of the questioned interpretations, a conclusion supported by several substantive reasons related to the legal nature of the regulatory decrees, among them: i) that, since the law and the decree are rules which are issued by different authorities, it could not be argued that the content of the latter serves to infer the scope and real intention of the legislative body which issued it; ii) that in its true sense, the regulatory power (art. 189, num. 11° C. P.) is not a valid tool of interpretation of the laws, but only a mechanism of instruction on the part of the supreme administrative authority to the remaining members of the executive branch on the best way to execute them; iii) in direct agreement with the previous point, that the mechanism of interpretation of the laws through other norms foreseen by the Political Constitution is fundamentally the expedition of a new law on the part of the Congress of the Republic (article 189, num. 11° C. P.). 150, num. 2° C. P.); iv) that coming from an authority other than the legislative body, the regulatory decree could well exceed or alter the authentic content of the regulated law, in which case it is possible to request its nullity before the administrative contentious jurisdiction (art. 84 Contentious-Administrative Code).

Thus, the Court will declare itself inhibited from deciding on the two constitutional charges

that have just been studied.

6.4. On the subsidiary claim contained in the first and fourth charges of the complaint.

As will be recalled, the two charges already analyzed include as a subsidiary claim, for the case in which the Court does not accede to the request to declare unconstitutional certain interpretations of the norms demanded, the simple declaration of unconstitutionality of the expressions accused there.

With respect to these requests, it is enough to simply point out that although originally and in the correction brief this claim was formulated in relation to the accused norms, all the arguments of the plaintiffs in both libels are directed exclusively to sustain the inexequibilidad of certain interpretations, repeatedly stating that in their concept there are other possible interpretations that would agree without problem with the constitutional text.

Given that this explanation could not in any case lead to the inexequibilidad of the expressions demanded, but if perhaps to the declaration of conditioned exequibilidad of the same ones, scenario that already has been discarded by the ineptitude of the formulated charges, it is forced to understand then that in relation to this specific subsidiary pretension does not exist position properly supported from which the proposed decision could be adopted.

Consequently, also in this respect, the Court is inhibited from deciding on the first and fourth counts of the application and will so state.

6.5. Proceeds of the second charge in the lawsuit.

As will be recalled, the second charge states that "*the expression demanded* (-governed from the date of its promulgation-) *admits an interpretation both erroneous and unconstitutional, according to which Law 975 of 2005 entered into force from its promulgation for all purposes"*. As the actors explain below, the validity of this law (975 of 2005) from the date of its enactment is only one of the possible interpretations that could be made of the accused text, others being appropriate, such as that according to which *"in reality Law 975 of 2005 has a staggered or differentiated validity in time",* This is the conclusion that would be derived from the existence of a condition contained in article 10 of the same law, relating to the sending by the Government to the Attorney General's Office of a list of persons who would be the recipients of the criminal benefits established in this law.

Now, given that, also in this case, the plaintiffs include as a subsidiary claim the declaration of the pure and simple unconstitutionality of the challenged normative segment, the Court will first and jointly refer to the procedibility of those two claims, based on the analysis of the challenged normative segment.

The Chamber observes that the plaintiffs as well as some of the interveners make an important argumentative effort in order to demonstrate that the entry into force of Law 975 of 2005 from the date of its enactment is only one of the possible interpretations that could be made of the

fragment of Article 72 defendant in this case. Consistent with this, they postulate that there are other possible interpretations of this precept, particularly that according to which the defendant law would have a staggered validity over time, starting from the effect of a suspensive condition contained in its article 10 that would affect several of the provisions of this statute, a condition that was only verified in the month of August 2006, that is, after the issuance and notification of judgment C-370 of that year, of this corporation.

However, the Court considers that the defendant text is so clear and diaphanous in its operative content that there is no possibility of speculating on the possible interpretations that could be made of it, as proposed by the plaintiffs. For this corporation, the only possible reading of the accused fragment is that according to which all the provisions of Law 975 of 2005 apply from the date of promulgation of that law.

On the basis of this observation, and given that it is precisely this normative effect that the plaintiffs consider unconstitutional, the Court finds that this charge would not meet the aforementioned requirement of certainty, let alone the other requirements necessary for a substantive pronouncement to be issued, in relation to the questionable interpretation that the plaintiffs' concept can make of the defendant text. However, for the same reasons, and given that the support of this position aims precisely to controverte the enforceability of the mandate that, according to its literal wording, establishes this rule, it is considered feasible to undertake its study in relation to the subsidiary claim, that is to say, the simple inexequibilidad of the text demanded.

Thus, the Court then analyzes the constitutionality of the text.

6.6. The legislator is autonomous to set the effective date of the law.

In reiterated and consistent jurisprudence, this corporation has pointed out that, given the absence of a constitutional norm that regulates the issue, the determination of the date of entry into force of a law is a matter that belongs exclusively to the legislator, against which it is not possible for the constitutional judge or other authority to question the meaning of his decision.

Indeed, as much as it is up to the legislator to decide on the content and scope of the norms that it will adopt in the development of its competences, as well as on the addressees thereof, it is also up to the legislator to determine the date of entry into force of its mandates. This decision is usually taken on the basis of criteria such as the extent and complexity of the approved rule, the need or not for society and legal operators to have sufficient knowledge of it before starting its application, and, in general, the analyses of convenience and opportunity, which, as the representative of society and its various interests, it is incumbent upon it to carry out.

Within this autonomy, the legislator may adopt any rules of entry into force, provided, of course, that they do not precede the publication of the law, which extends from the time the law is immediately sanctioned or promulgated until it begins several months or years later. Also, as indicated by the plaintiffs, it may provide for a staggered or fractionated term, for different chapters of the rule or for specific precepts. Likewise, it is clear that the rules on the

validity of the law do not necessarily have to be contained in its last article (which is no more than a custom strongly rooted in our legislative technique), and can be found in any other provision of the normative body in question.

Finally, there are supplementary legal norms that determine the entry into force of the law in the absence of a precise indication of the legislator within the text of the law. According to these rules, the observance of the law begins two months after the date of enactment.

Only in very exceptional cases in which the rules established by the legislator generate a situation of discrimination or directly and unjustifiably affect another rule or superior value, could the constitutional judge question them or order the inexequibilidad of such rules. Which would be what, according to the plaintiffs' explanation, and in their concept, occurs in this case.

6.7. The rule on the validity of the law established in this case does not affect the model of transitional justice, the rights of victims or the right to peace.

As explained, the actors consider that this normative segment is unconstitutional, insofar as its practical effect, that is, the simultaneous entry into force of all the provisions of Law 975 of 2005 from the date of enactment of that law, leaves open the possibility of claiming the application, in accordance with the principle of favorability, of several precepts of the same law, which this Court, in Ruling C-370 of 2006, declared unconstitutional or of conditioned exequibilidad. They argue that such a situation would violate the model of transitional justice, the rights of victims, the right to peace dealt with in article 22 above, and the principle of favourability, which under article 29 above is an integral part of due process, and which would be applied to situations other than those envisaged by the Constituent.

Thus, the violation of the rules invoked, and therefore the prosperity of the office raised, depends on the effect of this rule can claim the application of rules of Law 975 itself found unconstitutional by this corporation, under the argument of having been in force, at least transitory, between the date of enactment of that law and the enforcement of the ruling that declared them unconstitutional.

However, from this point of view it should be pointed out that the Court considers the charge to be unfounded, since the mere fact that all the provisions of this law had entered into force on the date of its enactment is not enough to be able to invoke its application, even less so that certain persons may be credited with the benefits contemplated therein, which is the effect that the plaintiffs attribute to this normative segment, from which they demand its inexequibilidad. This is because, as stated by some of the participants, in addition to the validity of the rule, there are other relevant considerations at the time of defining the application of the same.

Validity, the concept with which the verb *to govern* is related, which is the one used in the text of the expression demanded, is an attribute of a formal nature, and it is related to the time during which the norm has an imperative character. The validity begins, as has been said, on the date or time determined by the legislator, which must, in any case, be subsequent to the

conclusion of the procedure constitutionally required for the issuance of the law and its necessary publication for the knowledge of its addressees; at the other extreme, the validity ends with the repeal of the rule, or in its case, with the declaration of inexequibilidad, which entails its expulsion from the legal system.

However, something different is the effectiveness of the precept, that is, the real possibility of executing it, projecting its imperative mandates to the resolution of a specific case. This effectiveness of the rule is therefore a relative attribute, which depends on full compliance with the assumptions, both material and personal, and even temporary, to which, by the will of the same legislator, its applicability is subject. It may well then happen that a formally in force legal provision is not as effective, because the factual criteria to which the same norm has conditioned its application are not fully met, or that an effective precept, and in principle applicable, is not effective with respect to a given subject, because the material and personal assumptions necessary to claim such application are not met at its head.

In the case of the provisions that make up Law 975 of 2005, and particularly those that establish benefits of a criminal nature, it is clear then that for their invocation and application it is not enough to prove their temporal validity. On the contrary, in order to do so, it will be necessary for the specific case to fully comply with the assumptions on which its application depends, aspects on which this corporation had the opportunity to discuss extensively in Judgment C-370 of 2006, among which are those that concern the behavior of individuals interested in becoming creditors to such benefits, such as, among others, effective collaboration in the clarification of the facts investigated, the delivery of goods for reparation, compliance with the guarantees of non-repetition, etc.

Therefore, the Court states that the application of these rules cannot be understood as automatic, since it is conditioned not only to the accreditation of their transitory validity, but also to the effective fulfillment, during that period, of the material and personal budgets to which reference has been made. In other words, it is clear that the benefits that this law establishes are only applicable from the moment in which all the requirements foreseen in the law itself are fulfilled and in accordance with the constitutional interpretation set forth in Judgment C-370 of 2006 and in the other judgments that this corporation has pronounced on the constitutionality of such precepts.

Therefore, in view of the charge of unconstitutionality formulated in this case by the actors, it is clear to this corporation that there is no basis for questioning the rule on the validity of Law 975 of 2005 that the legislative body, in the legitimate exercise of its constitutional powers, established in article 72 of the referred law. Similarly, the Court considers that this rule, according to which all the provisions of this law are in force from the date of enactment of the law, does not violate the model of transitional justice, the rights of victims developed by the jurisprudence of this corporation, or the right to peace, which is why it does not violate any of the superior norms invoked in the lawsuit, but on the contrary, is clearly enforceable.

However, on the basis of what was raised by the plaintiffs and some of the interveners, the Chamber recognizes that it is feasible that some legal operators could interpret the provisions of Law 975 of 2005, which this corporation has declared unconstitutional or of conditional

exequibilidad, as having been temporarily in force in accordance with this rule, can still be applied in the development of the principle of favorability. In specific cases, this situation could lead to the unreasonable prohibition of the application of precepts that have been discarded from the legal system because of their material opposition to the Constitution, or on whose feasible interpretation clarifications have been formulated.

In view of this situation, the Court will declare, in the operative part of this ruling, that the accused normative segment is enforceable, on the understanding that the right to the benefits contained in Law 975 of 2005 is subject to full compliance with the requirements set forth in the same Law, in accordance with the interpretation that this corporation has made of them in its pronouncements on the matter, especially Judgment C-370 of May 18, 2006.

7. Fifth charge: On the inclusion of social services offered by the Government to victims within the concepts of reparation and rehabilitation due to victims.

The last charge in the lawsuit asks that the second paragraph of article 47 of Law 975 of 2005, which deals with the issue of rehabilitation, be declared unconstitutional. This request is justified by the fact that, according to the petitioners, the accounting of the social services offered by the Government to the victims of the conflict as part of reparation and rehabilitation affects the transitional justice model, which this Court would have accepted, has been enshrined in Law 975 of 2005, in addition to the right to peace and the right of victims to full reparation.

In support of this gloss the plaintiffs raise the difference between various **state responsibilities** provided for in the Constitution, namely: (i) the provision of social services to citizens, which is of a permanent nature and is aimed at the progressive realisation of the social, economic and cultural rights guaranteed by the Political Charter; (ii) humanitarian care for the victims of disaster situations, which is temporary in nature but may be prolonged, and which, on the basis of considerations of solidarity and humanitarianism, seeks to guarantee the subsistence and protect the dignity of such persons, alleviate their suffering and the conditions of extreme need they face, without there being any place to distinguish from the cause of the disaster situation, and iii) reparation due to the victims of atrocious crimes, an eventual public obligation that normally arises in a context of transitional justice and that includes both the duty to ensure that it is the perpetrators who first compensate the victims, and, in a subsidiary manner, a direct duty of reparation at the head of the State, in case of reluctance of the perpetrators or insufficiency of the reparation sought by them.

They explain then that, while the fulfillment of these duties meets different needs and objectives, and that therefore, they come from different legal titles, the demanded norm allows their confusion in the case of the victims of the armed conflict, which would lead to the undue restriction of the services that, within the framework of this law, must be provided to these victims. They expose that this confusion can lead to the extreme that when quantifying the reparation due to specific victims it is concluded that nothing is owed to them, because everything has been covered through the social policy actions generically developed by the State, or even worse, that it is they who owe the State. They add that this could also lead to undue relief, or even total exoneration, of the responsibilities incumbent on the perpetrators.

They affirm that in the Colombian case, as in some of the conflicts that have taken place in other countries of the world, the victims of atrocious crimes are normally persons belonging to the most marginalized classes from the social and economic point of view, so that in these cases reparation should not be limited to putting the person in the same state in which he or she was before being victimized. They postulate that, beyond this, reparation should be understood as an opportunity to restore to these people their full status as citizens, whose lack made them vulnerable and easy victims of the conflict. They therefore insist on the need to maintain the differentiation between the three responsibilities indicated above, so as not to dilute the reparation due to the victims. In any case, they recognize that such reparation must in no case be a source of unjust enrichment.

In support of the reasons why the situation described implies the unconstitutionality of the norm accused in this case, the plaintiffs argue that the possibility of confusing the reparation of victims with the social services of the Government has as its main purpose and effect to alleviate the economic burdens borne both by the perpetrators and by the State itself. Faced with this circumstance, they affirm that relief for the perpetrators would seek to facilitate their demobilization, while on the side of the State the issue is explained in the understandable interest of contributing to tax savings. They add that while both objectives are respectable and would be constitutionally valid, the impact that their achievement may have on the victims' right to full reparation is disproportionate.

Based on the foregoing, they affirm that the accused norm breaks the principle of transitional justice, by giving much more importance to the benefits that were sought for the criminals whose demobilization is sought, than to the interest of the victims and their right to justice and integral reparation. The norm would then be unconstitutional for violating the aforementioned principle and for not sufficiently protecting the rights of the victims, both elements considered to be an integral part of the constitutional bloc. Finally, they also affirm that this rule would violate the right to peace referred to in article 22 above, since while this is the purpose that nominally justifies incentives to demobilization, they consider that insufficient reparation does not provide guarantees for the sustainability of the peace that might be achieved, but on the contrary constitutes a factor of concern in this regard.

For these reasons, the plaintiffs ask for the unconstitutionality of the standard demanded.

8. Citizen interventions in relation to this office.

The following citizens' opinions on this charge are included in the pleadings and challenges received during the term of the list posting:

The **Juridical Secretary of the Presidency of the Republic** refuted the arguments of the plaintiffs and requested the Court to declare the rule demanded to be enforceable. In support of his request, he stressed, first, that in accordance with the jurisprudence of this corporation on the principle of integral reparation, mainly spilled in judgment C-370 of 2006, the first obligated to reparation are the perpetrators of the crimes that give rise to it, as well as the fronts or groups to which such persons belonged, a context within which the State's

responsibility in this respect is residual and subsidiary. On the other hand, it stated that the difference between social services, reparation and humanitarian aid is so clear that it would be difficult to generate the confusion to which the applicants refer.

He also stated that within a truly integral concept of reparation, such as that which in his opinion underlies Law 975, the symbolic and non-pecuniary components have a transcendent role, an aspect that would seem to be being ignored by the lawsuit when insisting on the importance of economic reparation. Finally, he added that the specific terms of reparation to victims must be established by the legislator in exercise of his freedom of normative configuration, so they could not be questioned before the constitutional judge, as is done in the lawsuit.

For their part, the representatives of the **Colombian Commission of Jurists** endorsed the reasoning of the actors, as well as their request that this norm be declared unconstitutional. In support of their request, they made a broad presentation of various aspects related to the actions developed by the State with respect to the population displaced by violence, in an attempt to demonstrate that in effect, the National Government practices and encourages confusion of these concepts, attempting to fulfill several different responsibilities based on the same actions.

Along the same lines, they also made a detailed analysis of the precept contained in paragraph 1 of article 47, a norm that was not demanded within this process, and of the application that has been made of it so far. However, they did not propose the normative integration of this section, merely adhering to the request that the second paragraph of Article 47 be declared unconstitutional.

The representative of the **Ministry of the Interior and Justice** made extensive reflections on this issue, leading to a request to the Court to declare the defendant's precept enforceable. As an initial argument, it also draws attention to the position taken by this corporation in Ruling C-370 of 2006 with respect to those responsible for reparation, stressing that according to that ruling, responsibility originally rests with the perpetrators of the punishable acts that caused the damage, and only subsidiarily with the State. It also underlines that article 5 of Law 975 of 2005 defines who are victims for the purposes of the application of this law, and that other rules establish who are victims of natural disasters, so that it could be wrong to confuse, from the text demanded, the recipients of different types of aid.

However, while recognizing that these are state duties of different origin and purpose, it defends as constitutionally valid the meaning of the norm demanded, insofar as certain actions can fulfill at the same time, and in an effective manner, such different objectives. In this sense, and with regard to the claim to the rank of citizen referred to by the actors, he maintains that simultaneity is valid insofar as it is very likely that the victims of the conflict have never before had access to the social services of the State, so that the real possibility of enjoying them can validly fulfill both the normal and ordinary purpose of the social policies that he must develop, as well as an authentically reparatory purpose.

On the other hand, based on the quotation and presentation of several other provisions, both

from Law 975 of 2005 itself and from previous laws, regulatory decrees, and even draft laws in progress at the time of submission of this document, it highlights how the State is carrying out various actions specifically and exclusively aimed at the victims of the conflict, in such a way that the relationship proposed with the social actions of the Government could in no case be understood as a reduction of the responsibilities that the Government has in the matter of reparation.

Finally, this intervener rejects the argument of the lawsuit regarding the purposes of the economic relief that the rule would offer, both to the perpetrators and to the State. With regard to the former, it should be noted that, in accordance with other articles of Act No. 975 of 2005, the delivery of goods and reparation by the offender are unavoidable requirements that must be met in order to enjoy the criminal benefits established by the Act. With regard to the State, it points out that judgement C-370 of 2006 declared the unconstitutionality of the part of numeral 56.1 of article 55 of this law, which made the payment of judicially decreed compensations subject to the availability of resources from the national budget, which is why there is currently no possibility for the State to oppose tax saving motives to the fulfillment of its reparation responsibilities.

The special representative of the **Ministry of Finance and Public Credit** also participated in relation to this point**,** requesting that the accused rule be declared enforceable, for which she made proposals very similar to those made by other participants already mentioned in previous pages. In particular, this intervener pointed out that the victimizer is the main party obliged to make reparation and that the responsibility of the State in relation to these matters is only subsidiary, in addition to the fact that other provisions of Law 975 require full reparation on the part of the victimizer as a necessary requirement to enjoy the criminal benefits that the law itself contemplates.

Several Colombian citizens representing the **International Center for Transitional Justice** also took the floor in relation to this position. They began by explaining what the work of this entity consists of and the reasons from which their knowledge derives from the topic discussed here. Invoking the quality of *amici curiae,* these persons requested the Court to declare the unconstitutionality of the norm to which this charge refers.

After referring to the context and purposes of so-called *transitional justice*, the participants stressed the need to maintain a careful balance between the different components of this type of model (peace, truth, justice and reparation). In view of the above, they affirm that there are no specific schemes that can be replicated from one country to another, but that each country in transition must and can design its own system, in accordance with its historical and economic circumstances and the nature of the conflict it seeks to overcome.

They also refer to the obligations of international law which, in relation to the issue, are incumbent on States for failing to fulfil their function as guarantor of the human rights of their citizens, and emphasize that within this context they have a primary responsibility with regard to the issue of reparation, and may, if necessary, repeat against the perpetrators of the crimes for which they are obliged to compensate.

In any event, they support the plaintiffs' saying that social services, humanitarian aid and reparation due to victims serve different purposes and legal titles and should not be confused. However, they argue that since most reparations programmes are carried out through administrative measures, Governments of States in transition often seek to fulfil their reparations responsibilities through the development of regular social programmes and policies.

They then refer to some international experiences in relation to the issue and raise the drawbacks that this practice may cause, particularly the dissatisfaction of victims and the idea that only through reparation and after their communities have been affected by the violence, is it possible for the State to comply with its ordinary constitutional obligations.

Faced with this situation, they propose two conditions on the basis of which it would be acceptable for the provision of government social services to be counted as a form of reparation, such as: (i) prior recognition by the State of responsibility for failure to comply with its obligations to protect citizens, a situation that gives rise to and explains the need for reparation, and which would make a difference with other events, such as emergencies and disasters, which give rise to other types of benefits; (ii) services specifically aimed at persons who have been victims of human rights violations.

To conclude, they refer to some pronouncements of the Inter-American Court of Human Rights in which this differentiation would have been marked, and emphasize that if these conditions were not met, the assimilation between social services and reparation, contained in this norm, would be undue.

Finally, the representative of the **Ombudsman's Office**, who limited himself to applauding and endorsing the reasoning of the plaintiffs on this issue, also pronounced himself in relation to this charge, albeit extemporaneously.

9. The opinion of the Attorney General in relation to this office.

In his concept of rigour, the head of the Public Prosecutor's Office requested the Constitutional Court to declare the conditional exequibilidad of paragraph 2 of article 47 of Law 975 of 2005, the object of this charge.

Initially, the Procurator makes some reflections on the state duty to repair and the correlative right to integral reparation, which arise as a consequence of human rights violations. In that connection, he pointed out that, according to rulings by international tribunals and official United Nations documents on the subject, that duty and the corresponding law, both individual and collective, were derived from rules of international law which, despite their customary origin, were imperative and inexcusable.

The fiscal concept summarizes the scope of these obligations, indicating that the duty of the State with respect to the issue of reparations includes: i) guarantee victims the availability of effective judicial remedies to enforce their right to reparation; ii) protect this right by intervening in the necessary judicial and administrative instances, preventing the obstruction

of its exercise; iii) provide due reparation in case of direct responsibility on the part of the State; iv) in case the violations of rights come from third parties, ensure that they are responsible for the reparation, and assume it directly in case the responsible parties do not fulfill this duty.

The Procurator also refers to the differences between permanent social services, humanitarian aid to victims of disasters and emergencies and reparation to victims, stressing that the latter implies recognition of responsibility for the damage that will be repaired, without which the benefits granted could not be considered reparations.

Based on these reflections, it requests the Court to declare the conditioned exequibilidad of the norm demanded, noting that in order for the social services of the Government to be considered part of the reparation and rehabilitation, it will be necessary: i) that there be recognition of responsibility on the part of the State in relation to the illegal damages that give rise to the reparation; ii) that it be clear that this reparation is conferred in attention to the character of victims of human rights violations, as a consequence of the crimes committed by the members of the organized armed groups outside the law, in the process of reincorporation.

10. Considerations of the Constitutional Court versus the fifth position.

It establishes the demanded precept that *"The social services provided by the government to the victims, in accordance with the norms and laws in force, are part of reparation and rehabilitation.* The plaintiffs question the enforceability of this rule, considering that it allows for a significant reduction in the scope of reparation due to the victims, since in quantifying the latter, everything related to social services received by them could be discounted, which would lead to situations in which this duty would be considered fulfilled, even though the victims have received very little or even nothing, by way of true reparation.

Prior to an in-depth analysis of the proposed position, the Court considers it necessary to include a brief general consideration of the scope of the concepts referred to in the norm, particularly those of reparation, rehabilitation and social services, as well as the treatment given to them, both by the legislator and by the jurisprudence of this Court, and where appropriate, by the competent international bodies in relation to the matter. Once these elements have been exposed, the Court will proceed to analyze the meaning of the accused norm, and on that basis, will decide on this charge.

10.1 The right to reparation and the relationship between this concept and that of rehabilitation.

In recent years, the Constitutional Court has developed a solid jurisprudential line on the rights of victims of punishable acts. This corporation has emphasized that based on the postulates of the social rule of law established in the 1991 Constitution, as well as the express mention of the victims by the superior text, there is a new conception of the role that corresponds to them within the environment of Criminal Law, one of the most relevant elements of which is the abandonment of the premise according to which the victims' right was exhausted in the sole economic reparation of the damages caused by the crime. This trend

is accentuated since Legislative Act 03 of 2002, which introduced in our country the accusatory criminal procedure system, in which this corporation has issued several important pronouncements on the matter.

On the scope of the victims' rights and their constitutional basis, the Court stated in judgment C-454 of 2006 (M. P. Jaime Córdoba Triviño):

> *"This reconceptualization of victims' rights, based on the Constitution, is based on several constitutional principles and precepts: (i) In the mandate that the rights and duties shall be interpreted in accordance with the international treaties on human rights ratified by Colombia (Art. 93 CP); (ii) in the fact that the Constituent had granted constitutional rank to the rights of the victims (Art. 250 num. 6 and 7 CP); (iii) the duty of the authorities in general, and the judicial authorities in particular, to promote the effective enjoyment of the rights of all residents in Colombia and the protection of legal property (Art. 2 CP); (iv) the principle of human dignity that promotes the rights to know what happened, and to have justice done (Art.1° CP); (v) in the principle of the Social Rule of Law that promotes participation, from which it follows that the intervention of victims in criminal proceedings cannot be reduced exclusively to claims of a pecuniary nature; (vi) and predominantly from the right of access to the administration of justice, from which derive guarantees such as having adequate and effective procedures for the legal determination of rights and obligations, the resolution of disputes brought before judges within a reasonable time and without undue delay, the adoption of decisions with full respect for due process, as well as the existence of a comprehensive and sufficient set of mechanisms for the settlement of disputes."*

In its pronouncements on the subject, this Court has highlighted the importance of the rights to **truth**, **justice** and **reparation**, which, although they do not exhaust the catalogue of victims' rights, constitute the backbone of such guarantees. This corporation has also highlighted the closeness and mutual dependence existing between these three concepts, pointing out: *"... truth, justice and reparation are erected as cardinal goods of any society that is founded on a just order and peaceful coexistence, among which mediate relations of connectedness and interdependence, in such a way that...:* ***It is not possible to achieve justice without truth. It is not possible to achieve reparation without justice****."*

However, this trilogy of rights has its own specific content within a context of transitional justice such as that which, in effect, underlies the institutions contained in Law 975 of 2005. Not in vain, most of the unconstitutionality charges that this Court has decided in relation to the provisions of this law have had to do with the eventual violation of any of these rights. For this reason, the doctrine of this corporation on the subject is contained in the decisions issued in relation to these lawsuits, particularly in the so often named judgment C-370 of 2006, in which this corporation decided on the enforceability of a large number of articles of this law. These approaches have been widely reiterated in subsequent judgments on the same norm, especially in Judgment C-575 of 2006 (M. P. Álvaro Tafur Galvis), and are equally relevant and therefore also reiterated in relation to the issue at hand.

In Ruling C-370 of 2006, the Court made a broad and exhaustive study of each of these elements, considering the understanding that has been made of them in the international human rights treaties ratified by Colombia, in the pronouncements of international courts of justice and in its own jurisprudence. As a result of that extensive analysis, the Court stressed that, within this context, reparation: (i) includes all necessary actions leading to the disappearance, to the extent possible, of the effects of the crime; (ii) like the concept of victim, has both an individual and a collective dimension; (iii) is not exhausted in its purely economic perspective, but has various manifestations, both material and symbolic; (iv) is a responsibility that concerns primarily the perpetrators of the crimes that give rise to it, but also the State, particularly in relation to some of its components. Based on these premises, the Court analyzed the charges of unconstitutionality based on ignorance of the victims' right to full reparation.

It should be added that the Constitution jealously protects the rights of victims, even in the face of possible actions or decisions by state authorities that could undermine them. Proof of this is that, in establishing the possibility that, for serious reasons of public convenience, amnesties or general pardons may be granted for political offences, it would have been noted that the granting of such benefits does not imply exemption from the civil liability of such persons, and that if so ordered by law, the State shall be obliged to pay any compensation that may be due (arts. 150, 17 and 201, num. 2 of the Constitution).

However, within the framework of Law 975 of 2005, a huge political effort whose purpose is to facilitate the reincorporation of members of armed groups outside the law who are willing to contribute effectively to the attainment of national peace, the right to reparation then has its own content, which derives from the text of its article 8, a norm that although it does not define the concept of reparation, refers to the different types of benefits that it encompasses.

This provision *("The right of victims to reparation includes actions for restitution, compensation, rehabilitation, satisfaction; and guarantees of non-repetition of conduct")* is reiterated and developed by article 44 of the same law, which is part of Chapter IX (articles 42 to 55), which develops the different institutions that make up the right to reparation.

From the content of these precepts it becomes clear, then, that *rehabilitation* is one of the aspects that make up the concept of reparation; hence it can be asserted that all rehabilitation actions carried out within the framework of this law are considered acts of reparation, but not vice versa.

Moreover, the aforementioned article 8 defines, after its initial enunciation, each of the elements contained therein. Thus, for example, it establishes that *compensation* consists of compensating the damages caused by the crime, while *rehabilitation* emanates from actions aimed at the recovery of victims who suffer physical and psychological trauma as a result of the crime. Rehabilitation then refers to actions that seek to restore the health of victims, including both purely somatic aspects, such as those related to their emotional well-being or mental health, aspects equally necessary to live and develop a dignified existence.

A complete reading of these definitions clearly shows that not all components of the repair

concept have an economic content. In reality, the only one that does is *compensation*, and it is notorious that, on the contrary, *rehabilitation does* not have that connotation. The Court comes back to this issue later, when deciding on this charge.

10.2. The Government's concept of social services.

Once the above concepts have been clarified, it is appropriate to refer to the *social services provided by the Government to the victims in accordance with the norms and laws in force*, an expression that forms part of the text of paragraph 2 of article 47 that is being demanded in this case.

It should first be noted that the term *social services* does not appear under that same text in any article of the Political Constitution. It is also not mentioned in Chapter I of Law 975 related to principles and definitions, nor in any other norm of the same law, from which the scope of such expression could be deduced.

However, having reviewed the legislative process that preceded the approval of Law 975 of 2005, it is observed that the original bill contained an article 59 that exemplified the actions that constitute social services and whose execution could be considered part of the reparation due to the victims, which included *"... among others, assistance in health, education, housing subsidy, access to land titling programs for direct victims of forced displacement, and access to credits for replacement of property and repair of real estate"*.

Recognizing the great breadth of the term, the Court may infer from the foregoing elements the scope of this expression, understanding it, for the purposes of this decision, as activities of a permanent and habitual nature, carried out by the State or under its coordination or supervision, aimed at satisfying the general needs of the population, particularly those related to the rights to which the Constitution attributes a social character, or whose provision gives rise to public social expenditure. In this sense, the Court considers correct the understanding proposed by the plaintiffs who associate this expression with the concept of *social policy*, that is, activities of a permanent nature, planned and developed by the State in order to make effective the social, economic and cultural rights guaranteed by the Political Constitution, such as those related, by way of illustration, to the attention of needs in health, education and/or housing.

10.3. The relationship between government social services and reparation and rehabilitation actions.

As has been explained, the actors consider that the precept demanded allows and even promotes a confusion of concepts between government social services, humanitarian aid to disaster victims and actions aimed at reparation for victims, as a result of which they would see the scope of their right to reparation diminished to the same extent that they are beneficiaries of social services provided by the government.

Several speakers on behalf of different Ministries and official agencies presented reasons that would lead to support the possibility that the Government address through the same actions

the diverse needs of the victims, which would lead to the declaration of exequibilidad of this rule. For their part, the Colombian Commission of Jurists, the International Center for Transitional Justice and the Ombudsman's Office endorsed the reasoning of the actors, which is why they adhered to their request for unconstitutionality.

Finally, the Attorney General makes considerations similar to those of the International Center for Transitional Justice, but proposes that this rule be declared conditionally enforceable, on the basis of which social services that are considered as reparations must be preceded by a recognition of responsibility by the State for the violation of victims' rights, in addition to being specifically designed for this type of recipients.

Based on the proposals made by the actors, the interveners and the Attorney General, this corporation then answers the following question: *Is it constitutionally valid for the provision of certain social services by the Government to be considered as part of the reparation due to victims of human rights violations within a context of transitional justice?*

In relation to this issue, the Court begins by recognizing the conceptual separation existing between the Government's social services, humanitarian assistance in the event of disasters (regardless of their cause) and reparation to victims of human rights violations. Indeed, as the actors maintain and as accepted by all the participants, these are clearly differentiable duties and actions, in relation to their source, frequency, recipients, duration and various other aspects. The Court also accepts that, for these same reasons, none of these actions can replace another, to the point of justifying the denial of a specific benefit owed by the State to a specific person, on the basis of the prior granting of another benefit(s) of a different source and purpose.

This undoubtedly transcends the purely economic dimension and includes, as elements of comparable importance, other types of actions, both individual and collective, that restore the health, self-esteem and tranquillity of the victims and the communities to which they belong.

In the same vein, it should be remembered that *rehabilitation*, to which the accused precept refers, has the purpose of seeking the recovery of the health, both physical and mental, of the victims. It is clear to the Court that the common social services provided by the Government, even to persons who have been victims of the crimes referred to in Law 975 of 2005, do not correspond to any of the actions through which reparation should be sought for the harmful consequences of the crime.

It is also clear that although a relationship of complementarity and mutual impact can be established between the Government's social services and the actions aimed at reparation due to the victims, which even makes it possible to accept that in certain cases the simultaneous execution of both types of actions occurs, it is not possible, on the other hand, to consider that the former can replace the latter, precisely because of their different reason and intentionality, as well as the different legal title that originates the former and the latter.

Once these considerations have been made, the Court proceeds to examine the meaning and the real effect of the precept demanded, from which it will proceed to pronounce on its

constitutionality.

10.4. The operative content of the defendant provision

It establishes the accused normative segment that *"The social services provided by the government to the victims, in accordance with the norms and laws in force, are part of reparation and rehabilitation.*

The Court emphasizes that this precept corresponds to the second paragraph of a norm (article 47) which, according to the title assigned by the legislator, refers to the *rehabilitation* of victims, understood as a component of the right to *reparation*, in accordance with the provisions of article 8 of Law 975 of 2005. It also notes that partially accused article 47 is part of Chapter Nine of this law, entitled precisely the *right to reparation for victims,* so its operative content must be interpreted within this same context, that is, as part of a broader normative system (articles 42 to 56), which refers in detail to each of the components of reparation and fully regulates the matter in question. For this reason it is clear that the accused norm cannot be interpreted in isolation from the other provisions related to the subject, such as the remaining articles of this chapter.

As explained by the plaintiffs, and as the Court now verifies, the link created by the rule under attack has the effect that the reparation owed to the victims may be reduced by the effect of the social services they have benefited from, to the point that in specific cases some victims may not receive any sum or benefit for reparation, and even that some of them may be, paradoxically, debtors of the government that provided the aforementioned services. Any of these situations would injure the victims' right to integral reparation, within a transitional justice context.

Moreover, the Court emphasizes that the expression *"are part"*, used in the norm demanded, is of an imperative character and not purely eventual or permissive, which considerably paves the way for the protection of this norm to try, in specific cases, to avoid or have significantly reduced the obligations related to the reparation of the victims, under the pretext that they have already been repaired through the social services that the Government must generally provide.

On the other hand, it should be noted that, as the actors and several of the interveners emphasized, social services and reparation actions are the responsibility of clearly differentiated subjects, since the former attend to the fulfillment of state obligations, while the latter correspond to the subjects responsible for the crimes whose commission gives rise to the need for reparation, and subsidiarily to the State. To such an extent, it is inappropriate to state that government action, in the development of general duties incumbent upon the State, may replace the reparatory action that falls primarily upon the perpetrators of the crimes, and that even though it may ultimately be complied with by the State from its position of guarantor, it has an ostensibly different nature.

On the basis of these reflections, the Court considers that the rule in question directly violates the victims' rights to full reparation recognized by international law, the Constitution and

jurisprudence, a situation that, without a doubt, highlights the unconstitutionality of the precept that contains it.

11. Conclusion

According to the study of the charges carried out in previous pages, the Court will refrain from deciding on the first and fourth of them, since such glosses do not meet the necessary conditions for this corporation to pronounce itself. It shall not make any determination with respect to the third charge on the ground that it has been rejected since the introductory order, which was confirmed at the time by this Plenary Chamber. And it will pronounce on the merits only in relation to the second and fifth charges of the lawsuit, declaring the conditioned exequibilidad of the normative part of the accused article 72 and the inexequibilidad of the second paragraph of article 47, both of Law 975 of 2005.

VII. DECISION

In view of the foregoing, the Constitutional Court, administering justice in the name of the people and by mandate of the Constitution,

R E S U E L V E

First: INHIBIT to issue a substantive pronouncement with respect to the first and fourth charges of the lawsuit, related to the risk of interpretations that could be unconstitutional, of the defendant texts of articles 2, 4, 48 and 49 of Law 975 of 2005.

Second: To declare **INEXEQUIBLE** the second paragraph of article 47 of Law 975 of 2005.

Third: To declare **EXEQUIBLE** the expression *"in force from the date of its promulgation",* contained in article 72 of Law 975 of 2005, in the understanding that the right to benefits is obtained from the fulfillment of all the requirements established in the pertinent norms of said law, in accordance with the constitutional interpretation established in sentence C-370 of May 18, 2006 and other sentences on such provisions.

Fourth: Copy yourself, notify yourself, communicate insert yourself in the Gazette of the Constitutional Court and comply.

HUMBERTO ANTONIO SIERRA PORTO
Chairman
Absent in commission

JAIME ARAÚJO RENTERÍA
Magistrate
With partial salvage of vote

MANUEL JOSÉ CEPEDA ESPINOSA
Magistrate

JAIME CÓRDOBA TRIVIÑO
Magistrate

RODRIGO ESCOBAR GIL
Magistrate

MAURICIO GONZÁLEZ CUERVO
Magistrate
Impediment accepted

MARCO GERARDO MONROY CABRA
Magistrate

NILSON PINILLA PINILLA
Magistrate

CLARA INÉS VARGAS HERNÁNDEZ
Magistrate
Excused absence

MARTHA VICTORIA SÁCHICA MÉNDEZ
Secretary General

SALVAMENTO PARCIAL DE VOTO A LA SENTENCIA C-1199 DE 2008 DEL MAGISTRADO JAIME ARAÚJO RENTERÍA

LAW OF JUSTICE AND PEACE-Vulneration of statutory law reserve (partial rescue of vote)

RIGHTS OF VICTIMS OF CRIMES-Includes the right to truth, justice and reparation (Partial Rescue of Vote)

EFFECTIVENESS AND EFFECTIVENESS OF THE STANDARD-Difference (partial rescue of vote)

RIGHT-Based on meeting the requirements of the law (Partial Vote Rescue)

RIGHTS OF VICTIMS TO INTEGRAL REPAIR IN JUSTICE AND PEACE LAW-Unawareness by rule that includes the social services provided by the government within the concepts of reparation and rehabilitation (partial salvage of vote)

GOVERNMENT SOCIAL SERVICES- Cannot count as part of the patrimonial reparation of the offense (Partial Vote Rescue)

Reference: File D-6992

Magistrate Rapporteur:

NILSON PINILLA PINILLA

With the usual respect for the decisions of this Court, I allow myself to partially save my vote for the present decision, bearing in mind that the unconstitutionality of Law 975 in its entirety should have been dealt with as a statutory law, defining the essential core of the victims' fundamental rights to truth, justice and reparation. In addition, neither before the law, nor with its issuance, nor before nor after the 2006 C-370 ruling, has there been truth, justice, and reparation for the victims. Although in this ruling the Court made an effort to specify the scope of the responsibility of the perpetrators, in reality it ended up cutting resources for true reparation, and that is that transitional justice cannot be synonymous with impunity. In that order of ideas, this law breaks the proportionality between crimes and penalties leading to extreme injustice.

The difference between the validity and effectiveness of the legal rule must be taken into account here. As has been pointed out, the law conditioned its effectiveness to the fulfillment of some steps that were clearly indicated, namely: demobilization, presentation of a government list to the Attorney General's Office, contribution, confession, reparation, etc. In addition, benefits can be lost and no one can demand the effectiveness of the law if it does not

comply with those stages, since the scheme was reciprocal. This affects the part of article 72 that establishes the entry into force of the law *"from the date of its promulgation.*

The typical conditioning by which an unconstitutional interpretation is expelled from the legal norm alludes to the original content that made it enforceable. In this case, he indicated that many of the steps were taken under the assumption that the Government would include the recipients of the law in the list of persons who would receive those benefits, but at the time of the ruling it may be that there was no such list. In this regard, a goal should be set and not remain in the stages, as individual acceptance is essential.

The Law arises from the fulfillment of all the requirements of the law, without indicating that it is successive, because it brings an element of confusion, since it is a complex legal act that requires the fulfillment of all the requirements established in the law.

With regard to the charges brought in connection with article 47 of Law 975 of 2005, the rule has the perverse effect of an obligation that the Government has with all persons, regardless of whether they are victims or not. At the same time, other people who are also entitled to them are taken away from these social services. The right of victims to full reparation derived from the commission of crimes, which is diluted or ends up being replaced by something that is an obligation of the State towards all persons, is unknown. These services are for all people, regardless of whether they are victims or not. The rest is unconstitutional, since the right to economic reparation cannot be excluded, so it cannot be accepted that the provision of social services, which are a duty of the State, is counted as part of the reparation of the crime, with which the perpetrators will conserve their property, furthermore, because the property damage cannot be charged twice. This does not mean that the Government should not provide those social services, but not that they are part of that wealth reparation. In this sense, they cannot be quantified and if they are quantified, they can end up in debt with the perpetrators who would evade their obligation. From the patrimonial point of view, that's not reparation for the crime.

On the basis of the foregoing, except in part for my vote on this judgment.

Date *ut supra*.

JAIME ARAÚJO RENTERÍA
Magistrate