Judgment C-228/02

INCONSTITUTIONALITY DEMAND-Minimum **Requirements/INCONSTITUTIONALITY DEMAND-Reasons** for which accused provisions violate the Constitution

PRO ACTIONE PRINCIPLE IN UNCONSTITUTIONALITY SUIT

CIVIL PART, VICTIM AND PERJUDICATE IN CRIMINAL PROCESS-Different legal **concepts/CIVIL** PART **IN CRIMINAL PROCESS-Concept/CIVIL PART IN CRIMINAL PROCESS-Directly** and legitimately interested in the course and results

The Court specifies that the civil party, the victim and the injured party are different legal concepts. In effect, the victim is the person in respect of whom the typical conduct materializes while the category "injured" has a greater scope insofar as it includes all those who have suffered damage, even if it is not property damage, as a direct consequence of the commission of the crime. Obviously, the victim also suffers in damage, in that sense, he is also an injured party. The civil party is a legal institution that allows victims or injured parties, including the victim's successors, to participate as subjects in criminal proceedings. The civil character of the party has been understood in a purely patrimonial sense, but in reality it may have a different connotation since it refers to the participation of members of civil society in a process conducted by the State. Thus, the civil party, by reason of criteria, is directly and legitimately interested in the course and results of the criminal process, as shown below.

VICTIM RIGHTS OF CRIME-Broad **Protection**

There is a worldwide trend, which has also been taken up at the national level by the Constitution, according to which the victim or injured party of a crime not only has the right to economic reparation for the damages caused to him, whether they are consummated or tempted crimes, but also has the right that through the criminal process the truth is established and justice is done. This trend is evident in the text of the Constitution as well as in international and comparative law.

VICTIM RIGHTS AND LOSSED BY PUNISHABLE FACT IN CRIMINAL PROCESS-Scope in light of the Constitution

CIVIL RIGHT IN CRIMINAL PROCESS-Scope in the light of the Constitution

VICTIM RIGHTS OF CRIME-Relevance

FISCAL GENERAL DE LA NACION-Function of ensuring the protection of victims

DELICIT-Not exclusive reference to patrimonial reparation but also to integral protection of rights.

VICTIM RIGHTS IN CRIMINAL PROCESS-Linked to respect for human dignity

PRINCIPLE OF HUMAN DIGNITY IN THE RIGHTS OF THE CIVIL PART IN CRIMINAL PROCESS-Impede that protection be exclusively of an economic nature.

CONSTITUTIONAL RIGHTS-Conception and the role of judicial protection mechanisms

CIVIL RIGHTS IN CRIMINAL PROCESS-Conception of comprehensive **protection/CIVIL** RIGHTS **IN CRIMINAL PROCESS-Not** this prima facie limited to the **economic/GENERAL NATIONAL TAX-Measures** necessary to give effect to the re-establishment of the right

RIGHT OF ACCESS TO THE ADMINISTRATION OF JUSTICE-Judicial **remedies**

The right to access to the administration of justice may include various judicial remedies designed by the legislator that are adequate to obtain the truth about what happened, the punishment of those responsible and the material reparation of the damages suffered.

PRINCIPLE OF PARTICIPATION IN VICTIM LAW IN CRIMINAL PROCESS-Constitutional **Foundation**

RIGHTS OF VICTIMS AND PUNITABLE FACT IN CRIMINAL PROCESS-Rights to truth, justice and economic reparation

RIGHTS OF VICTIMS AND LOSSED BY PUNITABLE FACT IN CRIMINAL PROCESS-Constitutional **foundation** in good name and honor

RIGHTS OF VICTIMS AND HARRIED BY CRIME-Broad **Contraception**

The constitutional conception of the rights of victims and victims of crime is not limited to material reparation. This one's wider. It includes demanding from the authorities and judicial instruments developed by the legislator to achieve the effective enjoyment of the rights, that these be oriented to their integral restoration and this is only possible if the victims and injured by a crime are guaranteed their rights to the truth, to justice and to economic reparation of the damages suffered, at least.

VICTIM RIGHTS OF CRIME IN INTERNATIONAL LAW-Current **state of** protection

VICTIM RIGHTS OF CRIME IN INTERNATIONAL LAW-Broad **concept** of the right to effective judicial protection

VICTIM RIGHTS OF CRIME IN INTERNATIONAL LAW-Insufficient compensation for damages for effective protection of human rights

In international law, it has been considered insufficient for the effective protection of human rights for victims and injured parties to be granted only compensation for damages, since truth and justice are necessary for a society not to repeat the situations that led to serious violations of human rights and, moreover, because recognition of the inherent dignity and equal and inalienable rights of all human beings requires that the judicial remedies designed by States be geared towards comprehensive reparation for the victims and injured, including economic compensation and access to justice in order to know the truth about what happened and to seek, through institutional channels, the just punishment of those responsible.

VICTIM RIGHTS OF CRIME IN INTERNATIONAL LAW-Possibility of knowing the truth and obtaining justice

VICTIM RIGHTS BY PUNISHABLE FACT IN COMPARED RIGHT-Brief reference to trend towards recognition and expansion

VICTIMS AND PERJUDICATES IN CRIMINAL PROCESS-Purpose of the intervention/VICTIMES **AND PERJUDICATES IN CRIMINAL PROCESS-Interest** in truth and justice

RIGHTS OF VICTIMS AND PUNITABLE FACT IN THE CRIMINAL PROCESS-Broad **Contraception**

Both in international law and in comparative law and in our constitutional order, the rights of victims and injured parties for a punishable act enjoy a broad conception -not restricted exclusively to economic reparation- based on the rights that they have to be treated with dignity, to participate in the decisions that affect them and to obtain effective judicial protection of the real enjoyment of their rights, among others, and which requires the authorities to direct their actions towards the integral restoration of their rights when they have been violated by a punishable act. This is only possible if the victims and those harmed by a crime are guaranteed, at the very least, their rights to the truth, to justice and to economic reparation of the damages suffered.

VICTIMS AND LOSSES FROM CRIME-Relevant **rights**

The victim and those harmed by a crime have interests in addition to mere pecuniary reparation. Some of their interests have been protected by the 1991 Constitution and are translated into three rights relevant to analyzing the norm demanded in the present process: 1. The right to the truth, that is, the possibility of knowing what happened and seeking a coincidence between the procedural truth and the real truth. This right is

particularly important in the face of serious human rights violations. The right to justice in the specific case, that is, the right not to have impunity. 3. The right to reparation for the damage caused to him through financial compensation, which is the traditional way in which the victim of a crime has been compensated.

CIVIL PART IN CRIMINAL PROCESS-No interest in obtaining compensation

RIGHTS TO TRUTH AND JUSTICE OF THE CIVIL PARTY IN CRIMINAL PROCEEDINGS

CIVIL PART IN CRIMINAL PROCESS-Existence of real concrete and specific damage not necessarily of patrimonial **content/CIVIL** PART **IN CRIMINAL** PROCESS-essential procedural **budget** of **intervention/CIVIL** PART **IN CRIMINAL PROCESS-Determination** of legitimate interest to intervene.

There must be real damage, not necessarily of a specific, concrete, patrimonial content, that legitimizes the participation of the victim or of the injured in the criminal process in order to seek the truth and justice, which must be appreciated by the judicial authorities in each case. Once the quality of victim has been demonstrated, or in general that the person has suffered a real, concrete and specific damage, whatever the nature of this, he is legitimated to constitute himself as a civil party, and can orient his claim to obtain exclusively the realization of justice, and the search for truth, leaving aside any patrimonial objective. Moreover, even if the property damage is compensated, when it exists, if it has an interest in truth and justice, it can continue to act as a party. This means that the only essential procedural budget to intervene in the process is to prove the concrete damage, without being able to demand a claim tending to obtain the patrimonial reparation. The determination in each case of who has the legitimate interest to intervene in the criminal process also depends, among other criteria, on the legal good protected by the norm that typified the conduct, its injury by the punishable act and the damage suffered by the person or persons affected by the prohibited conduct, and not only on the existence of a quantifiable property damage.

VICTIMS IN THE CRIMINAL PROCESS-Constitutional **rights**

CIVIL PART IN CRIMINAL PROCESS - Legislative intervention **regulation**

CIVIL PARTNER IN CRIMINAL PROCESS-Requirement of intervention through an attorney

TECHNICAL DEFENSE-Validity of proceedings in criminal **matters/JUDICIAL** POWER OF ATTORNEY-General **rule** of access to justice

FREEDOM OF LEGISLATIVE CONFIGURATION IN THE MATTER OF JUDICIAL POWER OF ATTORNEY-Requirement in process/FREEDOM **OF LEGISLATIVE CONFIGURATION IN TECHNICAL DEFENSE AND MATERIAL DEFENSE-Protection** of substantial rights of participants.

CIVIL PARTY IN CRIMINAL PROCESS-Intervention through a lawyer does not violate **equality/CIVIL** PARTY **IN CRIMINAL PROCESS-Insurance** effective enjoyment of rights

CIVIL PART IN CRIMINAL PROCESS-Material and technical **defence**

CIVIL PARTNER IN CRIMINAL PROCESS-Victim or injured party and representative

CIVIL PART IN CRIMINAL PROCESS-Intervention under **equality/CIVIL** PART **IN CRIMINAL PROCESS-Intervention** of direct appeals and request for the taking of evidence

CIVIL PART IN CRIMINAL PROCESS-A field of action in the light of the broad conception of your **rights/CIVIL** PART **IN CRIMINAL PROCESS-Constitution** from resolution of opening of instruction

CIVIL PART IN CRIMINAL PROCESS-Access to the **file/CIVIL** PART **IN CRIMINAL PROCESS-Opportunity** to be constituted

NORMATIVE UNIT - Exceptional **origin** of integration

THING JUDGED MATERIAL SENTENCE OF EXEQUIBILITY-Effects

THING JUZGADA MATERIAL-Elementos para determinación/COSA **JUZGADA MATERIAL DE SENTENCIA DE INEXEQUIBILIDAD-Inconstitucionalidad** de norma reproducida

In order to determine whether the phenomenon of res judicata materialis present, it is necessary to examine four elements: A legal act has previously been declared unconstitutional. The defendant provision should refer to the same normative meaning excluded from the legal order, that is to say, it should reproduce it since the material content of the defendant text is the same as that which was declared unconstitutional. Such identity is assessed by taking into account both the wording of the articles and the context within which the provision being sued is situated, so that if the wording is different but the normative content is the same in the light of the context, it is understood that there has been a reproduction. That the previously judged reference text with which the "reproduction" is compared has been declared unconstitutional for "substantive reasons", which means that the ratio decidendi of inexequibilidad must not have been based on a formal defect. That the constitutional provisions that served as a basis for the substantive reasons in the previous trial of the Court in which the inexequibilidad was declared subsist. When these four elements are presented, one is faced with the phenomenon of substantive constitutional res judicata and, consequently, the reproduced norm must also be declared unconstitutional for violation of the mandate provided for in Article 243 of the Political Constitution, since this limits the legislator's competence to

issue the norm already declared contrary to the Fundamental Charter.

PRECEDENT IN A SENTENCE OF EXEQUIBILITY-Options in the event of a prior ruling on the same matter

Since there is a previous ruling on the same matter that is the subject of this lawsuit, but which was declared enforceable, we are faced with a precedent in which the Court has several options. The first is to follow the precedent, by virtue of the value of preserving judicial consistency, the stability of the law, legal certainty, the principle of legitimate confidence and other values, principles or rights protected by the Constitution and extensively developed by the jurisprudence of this Court. The second alternative is to depart from the precedent, using powerful reasons that respond to the criteria that the Court has also pointed out in its jurisprudence, in order to avoid the petrification of the right and the continuity of eventual errors. The Court may also reach the same conclusion as its previous judgement but for additional or different reasons.

PRECEDENT IN THE SENTENCE OF EXEQUIBILITY-Change

CIVIL PART IN CRIMINAL PROCESS-Reconceptualization and Implications

CHANGE OF JURISPRUDENCE-Reasons for not being considered arbitrary

According to the jurisprudence of this Court, for a jurisprudential change not to be considered arbitrary, it must obey powerful reasons that lead not only to modify the solution to the specific legal problem but that prevail over the considerations related to the right to equality and legal certainty that would invite to follow the precedent.

CHANGE OF JURISPRUDENCE IN CIVIL PART MATTER-Reasons

Within the reasons, the Court finds that, in this case, the most pertinent ones allude to the following points: A change in the legal system that served as a normative reference for the previous decision, which also includes the consideration of additional rules to those initially taken into account. A change in the conception of the normative referent due, not to the mutation of the opinion of the competent judges, but to the evolution in the currents of thought on relevant matters to analyze the legal problem posed. The need to unify precedents by coexisting, before the present judgment, two or more lines of jurisprudence found. The observation that the precedent is based on a doctrine in respect of which there was great controversy. These four types of compelling reasons justify, in this case, the modification of the doctrine according to which the victim or injured party of a crime is only interested in the economic reparation of the damage caused to him or her.

CIVIL PART IN CRIMINAL PROCESS-Scope of action in light of the broad constitutional conception of rights to truth, justice and economic reparation

CIVIL PART IN THE CRIMINAL PROCESS-Access to the file and provision of evidence

CIVIL PART IN THE CRIMINAL PROCESS-Intervention in the preliminary investigation stage

CIVIL PART IN CRIMINAL PROCESS-Constituted will be able to accede directly to the file from the beginning of previous investigation.

CIVIL PART IN CRIME AGAINST PUBLIC ADMINISTRATION-Displacement by the Comptroller General Violates Equality in Access to Justice

CONTRALORIA-Constitutional purpose/CONTRALORIA-Main interest in recovery of public heritage

CIVIL PART IN CRIMINAL PROCESS-Contracting Office and public entity harmed may compete

CIVIL PART IN CRIMINAL PROCESS-Exclusion of the Public Prosecutor's Office when it is harmed does not violate access to justice.

GENERAL FISCALY OF THE NATION-Lack of legal personality

Reference: file D-3672

Lawsuit of unconstitutionality against article 137 of Law 600 of 2000, "(p)or which issues the Code of Criminal Procedure".

Actor: Ricardo Danies González

Speaker Magistrates:
Dr. MANUEL JOSE CEPEDA ESPINOSA
Dr. EDUARDO MONTEALEGRE LYNETT

Bogotá, DC, three (3) April two thousand and two (2002)

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

FEELINGS

I. BACKGROUND

In a public action of unconstitutionality, Ricardo Danies Gonzalez is suing article 137 of the Code of Criminal Procedure (Law 600 of 2000).

Once the constitutional and legal formalities of the constitutional processes have been completed, the Constitutional Court proceeds to decide on the complaint in question.

Demanded Standard

The defendant provision reads as follows:

Law 600 of 2000
(July 24)
Issuing the Code of Criminal Procedure

(...)

"Article 137.- Definition. In order to obtain the reestablishment of the right and compensation for the damage caused by the punishable conduct, the injured party or his successors, through a lawyer, may become a civil party in the criminal proceedings.

In all proceedings for crimes against the public administration, it shall be mandatory for the injured legal person under public law to constitute a civil party. If the legal representative of the latter is the same syndicate, the Comptroller General of the Republic or the territorial comptrollers, as the case may be, shall assume the constitution of a civil party; in any case, when the fiscal control bodies deem it necessary in order to ensure the transparency of the claim, they may intervene as a civil party in a prevailing manner and displace the one constituted by the aforementioned entities.

When the aggrieved party is the Attorney General's Office, it shall be in charge of the executive director of the judicial administration or by the special agent designated by him."

III. THE LAWSUIT

The actor requests the Constitutional Court to declare the unconstitutionality of the norm demanded because it violates articles 13, 93 and 95 of the Constitution, as well as articles 1 and 5 of the Declaration of the Rights of Man and the Citizen (1789).

The first charge against the defendant rule is based on infringement of the constitutional principle of equality as regards access to justice. In the plaintiff's opinion, the law grants the defendant "the freedom to act directly in the defense of his or her case, so that he or she is empowered to directly seize the summary file, and not necessarily through a lawyer", while it imposes on the plaintiff or the injured party, "who acquires the

appellative from a civil party", the duty to act through a legal representative, which violates the principle of equality, "places the civil party at a disadvantage and leaves the plaintiff or the injured party in the hands of unscrupulous lawyers".

As for the second charge, the plaintiff points out that the defendant norm "rewards the crime" and "puts obstacles in the way of defending the rights of the plaintiff", since the civil party is unable to know about the judicial proceedings during the preliminary investigation stage, because it is not a party in the process and because this information is covered by the summary reserve. In the plaintiff's opinion, this is contrary to Articles 93 and 95 numeral 4 of the Constitution.

Consequently, it requests the Court to declare article 137 of the Code of Criminal Procedure unconstitutional and to order "the enforcement of equality in the rights of the accused and the complainant, the accused and the civil party, in criminal proceedings with a summary reserve in order to have direct access to the file, to request and provide evidence, for which the knowledge of the lawyer's office is not necessary, without the need for an intermediary".

IV. INTERVENTIONS

1. Citizen Ana Carolina Osorio

Citizen Ana Carolina Osorio requests the Constitutional Court to dismiss the plaintiff's claims and declare the constitutionality of the rule being demanded. He believes that the actor is mistaken since the rule does not restrict the rights that are said to have been violated but safeguards due process, the right to defense and the right to the assistance of a lawyer enshrined in various constitutional provisions. It considers that lawyers as proxies are the ones who guide the parties in the process, which is necessary due to the complexity of the procedure, the language and the requirements. It mentions that article 63 of the Code of Civil Procedure requires persons who have to appear at the trial to do so through an attorney-in-fact, and that the law itself provides for exceptions to this rule, for example, for the exercise of constitutional public actions or minimum amount proceedings. Finally, he maintains that the plaintiff grants the accused norm a scope that it does not have, since "the fact of requiring a lawyer does not deprive the parties of the right of access to the files", as stated in article 26 of the aforementioned code.

Office of the Attorney General of the Nation

Luis Camilo Osorio Isaza, acting as Attorney General of the Nation, intervened in the process to request the Court to declare article 137 of Law 600 of 2000 (Criminal Procedure Code) constitutional. The arguments on which your request is based are as follows:

2.1 The Public Prosecutor maintains that the norm under appeal had as its immediate antecedent article 149 of Decree 2700 of 1991 - former Criminal Procedure Code - which

also established that the injured party or his successors could constitute a civil party within the criminal proceedings, through a lawyer, this article being declared enforceable by the Constitutional Court through sentence C-069 of 1996, MP Antonio Barrera Carbonell.

2.2 considers that there is no violation of the equal treatment of the accused and the injured party, since under article 48 of the Code of Criminal Procedure the latter may - as in the case of the accused - intervene in his own case as a subject of proceedings in criminal proceedings when he is a lawyer.

2.3 maintains that if the complainant is the same injured party, it can act within the process by constituting a civil party through a proxy, in such a way that it acquires the status of a procedural subject, with all the rights that this implies. However, if the person decides not to become a civil party through an attorney-in-fact, "he or she has the right to request information from the judicial officer or to make specific requests, and may provide evidence in accordance with the provisions of article 30 of the Code of Criminal Procedure".

Finally, it considers that "it is not possible to preach inequality of the interests of the injured party against the rights of the union, because each of them has a different factual and procedural origin, and therefore, each one pursues opposing interests, that is to say, their right to equality cannot be assessed exegetically, but in line with the role that each one plays within the criminal process".

V. CONCEPT OF THE ATTORNEY GENERAL OF THE NATION

The Attorney General of the Nation, in concept of twenty-five (25) of October of two thousand and one (2001), requested to the Court to declare itself inhibited to pronounce itself of substance on the constitutionality of article 137 of Law 600 of 2000, for substantial ineptitude of the demand or, in subsidy, to declare it exequible in the accused.

1.1 In the opinion of the Public Prosecutor's Office, "there is an inept lawsuit because the plaintiff bases the charges on elements outside the law", since the problems raised by the lawsuit stem from different provisions, such as those relating to the rights and duties of the parties to the criminal proceedings, whereas the law being sued "is limited to stating the persons who may form a civil party to the criminal proceedings, but not the rights and procedural burdens they have". Consequently, it considers that the defendant did not file a specific constitutional charge against Article 137 of Law 600 of 2000, "because in his argumentation he does not state the contradiction of the contested rule and the Political Charter".

1.2 In the event that, in the opinion of the Court, a substantive pronouncement should be made, the Head of the Public Prosecutor's Office considers that the rule in question is limited to enshrining the power of the victim to bring an action for reparation or compensation for damages caused by the crime through the constitution of a civil party through a proxy, without the rule establishing anything about the rights of the injured

parties or their successors to obtain information about the process and even to provide evidence when they decide to act without the intermediation of a proxy.

1.3 Manifests that the Constitution enshrines the right of access to the administration of justice in order to obtain the resolution of conflicts and reparation for unjustly suffered damages (art. 229 C.P.). It invokes Constitutional Court decision C-163 of 2000 and considers it reasonable that article 137 of Law 600 of 2000 should have provided for intervention in criminal proceedings through the constitution of a civil party for the restoration of the affected rights and compensation for damages.

1.4 In his view, it is absurd to claim that the rule that allows civil parties to be declared unconstitutional "with the intention of extending their rights" and "proclaiming that its content limits access to the file by the subject of the proceedings when the rule says nothing about it".

1.5 It concludes that 'the vicissitudes or shortcomings that may arise on the part of the civil party's representative vis-à-vis those represented is a factual aspect that does not derive from the application of the rule' and that such situations may give rise to disciplinary action against the legal professional for a possible breach of his duties towards the principal, measures that are not analysed at this time.

Since the lawsuit has been filed in the corresponding procedural step for this type of business, the Plenary Chamber of the Court proceeds to rule on the constitutionality of the rules demanded.

VI CONSIDERATIONS AND FUNDAMENTALS

1. Competition

Pursuant to Article 241, paragraph 4, of the Constitution, the Court is competent to hear this application.

There is no inadequacy of the demand for errors in the formulation of the charges.

The plaintiff accuses article 137 of the Code of Criminal Procedure of violating the rights to equal access to the administration of justice and to the defence, on the basis of two assumptions: first, that the defendant has "the freedom to act directly in the defense of his case, so that he is entitled to directly seize the case file" while the injured party has no such possibility and must act "compulsorily through a lawyer"; and, secondly, that the accused norm places "obstacles for the defense of the rights of the complainant", who is unable to know about the legal proceedings due to the practical obstacles that they put in his way because he is not a party in the process and because the information contained in it is sheltered with the summary reservation, which does not apply to the union, who has direct access to the file and can ask for and provide evidence.

The Procurador General de la Nación asks the Court to declare itself ineligible to pronounce on the merits of the lawsuit, since, in his opinion, the problems it raises refer to other provisions, especially those relating to the rights and duties of procedural subjects within the criminal process, and do not derive from the norm demanded that regulates the constitution of a civil party in the criminal process. The subsidy requests that the accused provision be declared enforceable.

Therefore, before proceeding with the substantive examination, the Court must establish whether, in effect, the hypothesis of an inept lawsuit put forward by the Fiscal Hearing is configured, which, if established, would lead to an inhibitory ruling.

Within the minimum requirements to consider that a lawsuit complies with the legal requirement to present the reasons why the normative texts being sued violate the Constitution (article 2 numeral 3 of Decree 2067 of 2000), the Court has specified the following:

> "The effectiveness of political law depends, as this Corporation has said, on the reasons presented by the actor being *clear, certain*, *specific*, *pertinent* and *sufficient*. Otherwise, the Court will end up inhibiting itself, a circumstance that frustrates "the legitimate expectation of the plaintiffs to receive a substantive pronouncement from the Constitutional Court.

As for the first charge, contrary to what the Procurator claims, the provision in question expressly refers to the intervention of the civil party by means of a lawyer. Therefore, this office is specific, clear, relevant and sufficient, has a constitutional character and is subject to controversy in the judicial seat.

With regard to the second charge, the plaintiff points out that the victim is hindered in accessing the file and in the opportunity to become a civil party, situations that are found in provisions different from the norm demanded (articles 30 and 47, Law 600 of 2000). However, since the norm refers to the intervention of the civil party within the "criminal proceeding", the Court finds that the obstacles identified by the plaintiff are closely related to that expression, so it is necessary to analyze its scope, in order to determine whether or not the civil party is imposed obstacles in its access to justice that are contrary to the Charter. Therefore, there are also clear, specific, relevant and sufficient constitutional questions regarding this office that make a substantive pronouncement possible.

Therefore, although the plaintiff could have developed the position of equality and pointed out the relevance of some practical appraisals of the obstacles to exercising the right to defense, in application of the principle of *pro actione*, the Court finds that the lawsuit meets the indispensable requirements for pronouncing on the constitutionality of the accused norm, especially in light of the right to access to justice, and consequently proceeds to its study.

3. The problems to be solved

In order to determine whether Article 137 of the Code of Criminal Procedure is in conformity with the Charter, the Court must decide the following:

1. Is the requirement that the civil party in criminal proceedings be represented by a lawyer a violation of his right to equal access to justice?

2. Are the limitations imposed on injured parties or their successors to intervene in the "criminal proceedings" only from the time of the decision to open the investigation and to have access to the file during the preliminary investigation, violations of their right to equal access to justice?

Before resolving the problems raised, this Corporation considers it necessary to specify the rights of the civil party in the light of constitutional law, since their scope determines what the civil party may and may not do in criminal proceedings.

The Court specifies that the civil party, the victim and the injured party are different legal concepts. In effect, the victim is the person in respect of whom the typical conduct materializes while the category "injured" has a greater scope insofar as it includes all those who have suffered damage, even if it is not property damage, as a direct consequence of the commission of the crime. Obviously, the victim also suffers in damage, in that sense, he is also an injured party. The civil party is a legal institution that allows victims or injured parties, including the victim's successors, to participate as subjects in criminal proceedings. The civil character of the party has been understood in a purely patrimonial sense, but in reality it may have a different connotation since it refers to the participation of members of civil society in a process conducted by the State. Thus, the civil party, due to criteria that will be mentioned later, is directly and legitimately interested in the course and results of the criminal process, as shown below.

Comprehensive protection of the rights of crime victims and the reconceptualization of the civil party since the 1991 Constitution.

There is a worldwide trend, which has also been taken up at the national level by the Constitution, according to which the victim or injured party of a crime not only has the right to economic reparation for the damages caused to him, whether they are consummated or tempted crimes, but also has the right that through the criminal process the truth is established and justice is done. This trend is evident in the text of the Constitution as well as in international and comparative law.

Next, the scope of the rights of victims and injured parties for a punishable act in criminal proceedings will be examined first, in the light of the constitutional text. Subsequently, the evolution of the rights of the civil party in international law will be alluded to, since according to the provisions of Article 93 of the Charter, the rights must be interpreted in accordance with the human rights treaties ratified by Colombia. Thirdly, in order to illustrate the treatment of the rights of the civil party in the different legal systems, a brief reference will be made to the trend in comparative law.

4.1. The rights of the civil party in the light of the 1991 Constitution

In a social state governed by the rule of law and in a participatory democracy (article 1, CP), the rights of the victims of a crime are constitutionally relevant. For this reason, the Constituent Assembly elevated the concept of victim to constitutional rank. Thus, numeral 4 of article 250 Superior states that the Attorney General of the Nation must "watch over the protection of the victims".

As a development of Article 2 of the Charter, in carrying out the investigations and procedures necessary to clarify punishable acts, the authorities in general, and the judicial authorities in particular, should aim at the effective enjoyment of the rights of all residents in Colombia and the protection of legal assets of particular importance for life in society. However, this protection does not refer exclusively to the material reparation of the damages caused by the crime, but also to the integral protection of their rights.

The right of victims to participate in criminal proceedings is linked to respect for human dignity. Under article 1 of the Constitution, which states that "Colombia is a social State based on the rule of law and founded on respect for human dignity", victims and victims of a punishable act may demand that others treat them in accordance with their human condition. The dignity of victims and victims of punishable acts would be seriously violated if the only protection provided to them was the possibility of obtaining economic redress. The principle of dignity prevents human beings, and the legal rights and property protected by criminal law to promote the peaceful coexistence of equally free and responsible persons, from being reduced to an economic appraisal of their value. The recognition of compensation for damages arising from a crime is one of the solutions chosen by the legislator in view of the difficulty in criminal matters of achieving the full restoration of legal rights and property violated as a result of the commission of a crime. But it is not the only alternative, let alone the one that fully protects the intrinsic value of each human being. On the contrary, the principle of dignity prevents the protection of victims and victims of crime from being exclusively economic in nature.

This can also be seen in the conception and function of judicial mechanisms for the protection of the rights provided for in the Charter - such as guardianship action, enforcement action and popular actions, among others - which are intended to ensure an effective guarantee of the dignity and rights of individuals and are therefore not aimed primarily at seeking economic redress.

The Charter also reflects a broad conception of the protection of the rights of victims, which is not *prima facie* limited to the economic. In effect, numeral 1 of article 250, above, establishes as duties of the Attorney General's Office to "take the necessary measures to make effective the re-establishment of the right and the compensation of damages caused by the crime". It follows that compensation is only one of the possible elements of reparation to the victim and that the restoration of the victim's rights is more than mere compensation. The Constitution has set as a goal for the Attorney General's Office the "re-establishment of the right", which represents a full and integral protection

of the rights of victims and injured parties. The restoration of their rights requires knowing the truth of what happened, in order to determine whether it is possible to return to the state prior to the violation, as well as that justice be done.

In line with the above, Article 229 of the Charter guarantees "the right of everyone to have access to the administration of justice". This right includes, as this Court has recognized, having, among other things, 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, the existence of a broad and sufficient set of mechanisms for the settlement of disputes, that mechanisms be provided to facilitate access to justice for the poor and that the offer of justice allows access to justice throughout the national territory. And, even though the legislator has a wide margin to regulate the means and procedures that guarantee such access, this margin does not include the power to restrict the purposes of access to justice that guide the parties towards a comprehensive and full judicial protection of rights, in order to circumscribe such access, in the case of victims and injured parties of a crime, to the obtaining of economic compensation. Therefore, the right to access to the administration of justice may include various judicial remedies designed by the legislator, which are adequate to obtain the truth about what happened, the punishment of those responsible and the material reparation of the damages suffered.

The right of victims to participate in the criminal process to achieve the restoration of their rights also has as a constitutional basis the principle of participation (article 2, CP), according to which people can intervene in decisions that affect them. However, such participation must be made in accordance with the rules of participation of the civil party and without the victim or injured party being able to displace the Public Prosecutor's Office or the judge in the performance of their constitutional functions, and without their participation transforming the criminal process into an instrument of retaliation or revenge against the accused.

Finally, the rights to truth, justice and economic reparation recognized to victims or injured parties for a punishable act may have as a constitutional basis other rights, especially the right to a good name and honor of persons (arts. 1, 15 and 21, CP), since criminal proceedings may be the only occasion for victims and injured parties to controvert versions of facts that may be manifestly injurious to these constitutional rights, such as when statements are made during criminal proceedings that may affect the honor or good name of victims or injured parties.

In addition, the reduction of the rights of victims and injured parties to the interest in a financial reparation does not consult other constitutional rules, which establish fundamental principles and duties, closely related to the restoration of the rights of victims and injured parties. As for the principles, the principle of "ensuring peaceful coexistence" (article 2, CP) requires the State to provide mechanisms to prevent the violent resolution of conflicts and that of guaranteeing "the validity of a just order" (article 2, CP) makes it necessary to adopt measures to combat impunity. In terms of duties, that of "collaborating for the good functioning of justice" (article 95, #7, CP), implies that people give their help for the

achievement of a prompt and fulfilled justice, but not only to receive an economic benefit.

It follows from the above that the constitutional conception of the rights of victims and victims of crime is not limited to material reparation. This one's wider. It includes demanding from the authorities and judicial instruments developed by the legislator to achieve the effective enjoyment of the rights, that these be oriented to their integral restoration and this is only possible if the victims and injured by a crime are guaranteed their rights to the truth, to justice and to economic reparation of the damages suffered, at least.

4.2 The rights of victims of crime under international law and the right to effective judicial protection.....

In accordance with article 93 of the Constitution, "the rights and duties enshrined in this Charter shall be interpreted in accordance with the international human rights treaties ratified by Colombia", and the Court therefore briefly examines the current status of victim protection under international law.

The traditional view of the rights of the victim of a crime, restricted to economic redress, has become international law, particularly in relation to human rights violations since the mid-twentieth century, within a trend towards a broad conception of the right to adequate and effective judicial protection, through which victims obtain both reparation for the harm caused and clarity about the truth of what happened, and that justice be done in the specific case. The 1991 Constitution took up this trend, which gained momentum in the late 1960s and developed in the 1980s.

In international law, it has been considered insufficient for the effective protection of human rights for victims and injured parties to be granted only compensation for damages, since truth and justice are necessary for a society not to repeat the situations that led to serious violations of human rights and, moreover, because recognition of the inherent dignity and equal and inalienable rights of all human beings requires that the judicial remedies designed by States be geared towards comprehensive reparation for the victims and injured, including economic compensation and access to justice in order to know the truth about what happened and to seek, through institutional channels, the just punishment of those responsible.

In 1948, both the American Declaration of Human Rights and the Universal Declaration of Human Rights marked the beginning of a trend in international law to develop instruments that guarantee the right of all persons to effective judicial protection of their rights, through which they not only obtain reparation for the harm suffered, but also their rights to truth and justice are guaranteed.

In the Inter-American System for the Protection of Human Rights, the Inter-American Court of Human Rights has held something similar by stating that

"(...) the absence of an effective remedy against violations of the rights recognized by the Convention constitutes a violation thereof by the State Party in which such a situation occurs. In this regard, it should be emphasized that, for such a remedy to exist, it is not sufficient that it is provided for by the Constitution or the law or that it is formally admissible, but that it is required to be genuinely suitable to establish whether a human rights violation has been committed and to provide the necessary remedies. "(underlined added to the text)

In 1988 the Inter-American Court said the following:

"This obligation implies the duty of States to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, states must prevent, investigate and punish any violation of the human rights recognized by the Convention and also seek the restoration, if possible, of the right violated and, where appropriate, the reparation of damages produced by the violation of human rights (not original underscores)".

In a recent case, the Inter-American Court of Human Rights itself pointed out as contrary to the American Convention on Human Rights, the laws that left victims without the possibility of knowing the truth and obtaining justice, despite the fact that the State was willing to grant them economic reparation. The Inter-American Court said then:

"This Court considers inadmissible amnesty provisions, statutes of limitation and the establishment of liability exclusions intended to impede the investigation and punishment of those responsible for serious violations of human rights such as torture, summary, extralegal or arbitrary executions and forced disappearances, all of which are prohibited for contravening non-derogable rights recognized by international human rights law.

"The Court (...) considers that the amnesty laws adopted by Peru prevented the relatives of the victims and the surviving victims in the present case from being heard by a judge, in accordance with Article 8.1 of the Convention; violated the right to judicial protection enshrined in Article 25 of the Convention; prevented the investigation, prosecution, capture, prosecution and punishment of those responsible for the events that occurred in Barrios Altos, in violation of Article 1.1 of the Convention, and obstructed the clarification of the facts of the case. (...)

"43. The Court considers it necessary to emphasize that, in light of the general obligations enshrined in Articles 1(1) and 2 of the American

> Convention, the States Parties have the duty to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective remedy, in the terms of Articles 8 and 25 of the Convention. That is why States Parties to the Convention that adopt laws that have this effect, such as self-amnesty laws, violate Articles 8 and 25 in accordance with Articles 1.1 and 2 of the Convention. Self-amnesty laws lead to the defenselessness of the victims and the perpetuation of impunity, so they are manifestly incompatible with the letter and spirit of the American Convention. This type of law impedes the identification of individuals responsible for human rights violations, as it hinders investigation and access to justice and prevents victims and their families from knowing the truth and receiving reparation. (underlined out of text)

This right has been enshrined and developed in many international instruments. Thus, for example, the American Convention on Human Rights enshrines the right of every person to an effective judicial remedy, which has been interpreted by the Inter-American Court of Human Rights, as already noted, not only as the right to economic reparation, but also as the right to have the truth about the facts effectively known and those responsible fairly punished. Similarly, the Covenant on Civil and Political Rights enshrines the duty of States parties to provide effective judicial remedies for the protection of human rights.

This trend in international law is also present in the United Nations system. In particular, on 29 November 1985, the General Assembly of the United Nations adopted by consensus the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power", according to which victims "shall have the right to access to justice mechanisms and to prompt reparation for the harm they have suffered" and this requires that "the views and concerns of victims be presented and considered at appropriate stages of the proceedings, whenever their interests are at stake, without prejudice to the accused and in accordance with the relevant national criminal justice system".

This tendency not to reduce the rights of victims or injured parties to seek pecuniary reparation is also reflected in international humanitarian law. Protocol I recognizes the "right of families to know the fate of their members", which does not only refer to the possibility of obtaining financial compensation.

More recently, the Statute of the International Criminal Court - even though it is not yet in force and without this Court ruling on its constitutionality - expressly enshrined the rights of victims to submit observations on the jurisdiction of the Court or the admissibility of the case, to have a full presentation of the facts of the case in the interests of justice, to be treated with dignity, to have their safety and privacy protected, to have their opinions and observations taken into account, to be repaired materially and to appeal against certain decisions that affect their interests. The Statutes of the International Tribunals for Rwanda and Yugoslavia contain provisions relating to the protection of victims.

In the European context, victims' rights have also been widely recognised, including not

only compensation for damages, but also the right to a thorough investigation that provides clarity about what happened and leads to fair punishment of those responsible. In 1977 the Committee of Ministers of the Council of Europe issued Resolution (77) 27, with recommendations for the compensation of victims of crime. In 1983, the European Convention for the Compensation of Victims of Violent Crimes was drafted to address the situation of victims who have suffered bodily harm or impairment of health and of persons dependent on those who die as a result of these crimes, but it also refers to the obligation to protect victims and to grant them certain rights to participate in criminal proceedings. Subsequently, in 1985, the Committee of Ministers of the Council of Europe adopted Recommendation R (85) 11 on the position of the victim in criminal law and procedure; and in 1987, as a complement, Recommendation R (87) 21 on victim assistance and the prevention of victimization processes was formulated. Recently, as part of the fundamental rights recognised by the European Union, the Charter of Fundamental Rights enshrined the right to an effective judicial remedy.

In the same vein, the European Court of Human Rights said the following in 1996:

> "“95. The Court notes that Article 13 (right to an effective remedy) guarantees the availability at the national level of a remedy to protect the rights and freedoms enshrined in the Convention, regardless of how domestic law ensures them. The effect of this article is therefore to require an internal remedy through which the competent national authority decides on the merits of the complaint and grants the appropriate remedy, even though States parties have discretion to adapt to the obligations deriving from this norm. (...) In any event, the remedy required by Article 13 must be effective, both in law and in practice, in particular in the sense that its exercise must not be unreasonably impeded by the actions or omissions of the authorities of the respondent State.
>
> (...)
>
> "“98. (...) Article 13 imposes on States, without prejudice to the availability of other domestic remedies, an obligation to conduct a thorough and effective investigation into incidents of torture. "(unofficial translation) (underlined out of text).

As a result of this trend in human rights law, the international community has rejected domestic mechanisms that lead to impunity and concealment of the truth of what happened. Although this consensus refers to serious violations of human rights, the language of the cited texts, as well as the judicial interpretation of the same, also mentioned, has a scope that goes beyond such crimes.

4.3. The rights of the victim of a punishable act in comparative law: a brief reference to a trend towards their recognition and extension

The main objections to a broad conception of the rights of the civil party not restricted

exclusively to material reparation stem from the argument that in a state with a liberal tradition, the place of victims and those harmed by a crime is accessory, passive and reduced to an economic interest since it is the state alone that has the legitimacy to prosecute the crime within the framework of limitations and safeguards established by the Constitution and the law. For this reason, it is important that this subsection briefly examines the way in which some liberal legal systems have regulated the role that the civil party can assume within the criminal process and the rights associated with these possibilities of intervention, as well as the trends in this regard.

In both the Germanic and Anglo-Saxon Roman systems, the rights of the victims, the injured and the civil party have been considered relevant. However, the rights it has been granted, as well as the spaces in which it has been allowed to intervene, have evolved differently from one system to another. There are five issues of interest in this case: (i) the possibility of intervention by victims and injured parties in criminal proceedings; (ii) the possibility for the victim or injured parties to initiate criminal proceedings in the face of an omission by the State; (iii) the purpose of intervention by the victim and injured parties in criminal proceedings; (iv) the scope of protection of the victim's rights in criminal proceedings; and (v) the mechanisms through which full reparation can be guaranteed to the victim.

With regard to the possibility of intervention by victims and injured parties in criminal proceedings, two major trends have been identified. In the Germanic Roman systems, the intervention of the victims within the penal process has generally been admitted through their constitution as civil parties. In Anglo-Saxon systems, even though traditionally the victim and the injured do not have the character of a party in the criminal process and their intervention is that of a simple witness, this position has varied, even granting them the right to promote the criminal investigation and the criminal process.

As to when victims or injured parties may intervene in criminal proceedings, most countries that allow their intervention provide for it both at the pre-trial stage and during the trial stage. However, in systems where an inquisitorial system of criminal investigation still prevails, victims or injured parties do not have the possibility to intervene during the investigation stage. This is the situation in Belgium, where the civil party cannot intervene during the investigation stage, since it is a stage closed to all parties to the proceedings, not just the civil party. However, since 1989 this characteristic has been considered to be contrary to the European Convention on Human Rights.

With regard to the possibility that victims may initiate criminal proceedings before the omission of the State, different solution schemes have been adopted in consideration of the principles of opportunity and legality. In systems guided by the principle of legality, the occurrence of a punishable act obliges the State to initiate criminal action in all cases. In systems that recognize the principle of expediency, the prosecuting entity has greater discretion in deciding when not to initiate criminal action. In such cases, even though in principle the State has the monopoly of criminal action, private actions are allowed and mechanisms have been developed so that victims or injured parties can oppose the State's decision not to prosecute in a particular case.

In systems with an emphasis on the principle of opportunity, where the Public Prosecutor's Office has greater discretion to decide whether or not to initiate criminal action, victims and injured parties may act directly before the prosecuting entity in the initiation of criminal action, in cases expressly indicated by law. In principle, the reasons for not initiating criminal action include the absence of victims or injured parties, the extreme youth or old age of the offender, the minor nature of the offence, the lack of public interest, the existence of a prior reparation agreement between the victim and the offender, or the offender's acceptance of prior treatment, as is the case in the United States. For example, in the English case, the victim can use a kind of private action to bring criminal proceedings in cases of crimes for which the police are responsible. In other systems, such as the Belgian system, it is the judges who, at the request of the victim or the injured party, exercise control of legality over the decision of the Public Prosecutor's Office not to initiate criminal proceedings.

In systems with an emphasis on the principle of legality, the Public Prosecutor's Office is obliged to initiate criminal action in all cases. This is the case in Germany, Spain and Italy. In principle, the only reason why criminal proceedings are not initiated is because there is insufficient evidence to determine the occurrence of the punishable act or the possible liability of those involved. However, in order to make this system less rigid, a number of exceptions have been enshrined. For example, in Germany, the victim or injured parties may promote investigation and criminal proceedings in the case of indictable offences, offences affecting the privacy of individuals and certain minor offences. In the case of more serious crimes, the victim or injured parties may appeal the decision not to initiate the criminal action to the Attorney General, and if the Attorney General refuses to initiate the action, they may even go to the Court of Appeals to compel the Public Prosecutor's Office to institute the criminal action.

With regard to the purpose of the intervention of victims and injured parties in criminal proceedings, such intervention was initially aimed only at compensating for material damage. However, this possibility has evolved towards a more comprehensive protection of the victim's rights and it is now recognized that they also have an interest in truth and justice. This has been the case in the French system, where a person who has suffered personal and direct damage is allowed to become a civil party, even though such intervention is not subordinated to the filing of a claim for damages. The exercise of civil action before the criminal jurisdiction in France has a twofold purpose: 1) to obtain a judgment on the responsibility of the person and 2) to obtain compensation for the damage suffered. These rights of the victim have been extended since 1906, when the Court of Cassation admitted that the victim of a crime could go directly to the investigating judge to initiate the criminal process before the inaction of the Public Prosecutor's Office. This jurisprudence was later incorporated into the Code of Criminal Procedure and has evolved to recognize that criminal proceedings must guarantee victims the right to the truth, as happened recently, when the Prosecutor decided to continue with a criminal investigation to establish the truth of the facts in favor of the victims, in a case in which the killer had committed suicide after shooting and killing several members of a regional council. The search for the truth was the reason that led to the criminal process, despite the fact that the

person directly responsible had died.

The scope of protection of victims' rights within the process has also been broadened. Initially, it was understood that such protection referred exclusively to the guarantee of their physical integrity and, consequently, mechanisms were adopted to protect their identity and personal and family security; subsequently, this protection has been extended to ensure the full restoration of their rights and, as a result, certain rights have been recognized in criminal proceedings: the right to be notified of decisions that may affect their rights, to be present in certain proceedings and to challenge decisions that are contrary to their interests in truth, justice or economic compensation. Most systems recognize the civil party's right to provide evidence in the process, the right to be heard in the trial and to be notified of actions that may affect it, the right to a final decision within a reasonable time, the right to have their safety protected, the right to material compensation, but also the right to know the truth of what happened.

In the United States, since 1982, several state constitutions have recognized four basic rights for victims: (i) the right to be treated with justice, dignity, and respect; (ii) the right to be kept permanently informed of the progress of the investigation and trial; (iii) the right to be informed when the various trial hearings will take place; and (iv) the right to hear certain issues within the trial that are relevant to the testimony they will present. This trend led to a 1996 amendment to the U.S. Constitution aimed at protecting the rights of the victim. The specific rights of this amendment, which has not yet been adopted, and of state constitutions, are not limited to protecting the interest in reparation of damages, but include actions relating to the interest in clarifying the facts for the sake of truth, such as the interest in the right to have the victim heard when negotiating the sentence or deliberating on a parole measure.

As for the mechanisms designed to guarantee reparation to the victim and injured parties, even in the area of economic compensation, the trend has been towards full reparation. Many legal systems have created special funds to compensate victims and injured parties for both the emerging damage and the loss of profit caused by the punishable act, in events where the convicted person does not have sufficient financial means to pay the victim.

From the foregoing it emerges that in the different legal systems of liberal tradition it is recognized that victims and injured parties have an interest in intervening in the criminal process, which is not reduced to seeking material reparation. Likewise, it is observed that the participation of the victim and the victims in the criminal process has not transformed it into a retaliation mechanism against the accused, nor has it placed on the same plane the economic interest of those who are harmed and the freedom of those who are being prosecuted, since in the face of the occurrence of a punishable act all the rights that have been violated are also weighed against the punishable conduct damaging the legal property that they protect.

In addition, the participation of the civil party in the criminal process has not implied, as might be feared within the liberal tradition, a privatisation of the criminal action. As in democracies there is no absolute confidence in the sanctioning power of the State, criminal

law has also developed mechanisms to correct inaction or arbitrariness in the exercise of *ius punendi* and, in certain cases, the victim and injured parties have been allowed to initiate criminal proceedings, as noted above.

4.4. Conclusion

From the foregoing, it arises that in international law, comparative law and our constitutional order, the rights of victims and victims of a punishable act enjoy a broad conception -not restricted exclusively to economic reparation- based on the rights that they have to be treated with dignity, to participate in the decisions that affect them and to obtain effective judicial protection of the real enjoyment of their rights, among others, and that requires the authorities to direct their actions towards the integral restoration of their rights when they have been violated by a punishable act. This is only possible if the victims and those harmed by a crime are guaranteed, at the very least, their rights to the truth, to justice and to economic reparation of the damages suffered.

In such a way that the victim and those harmed by a crime have interests in addition to mere pecuniary reparation. Some of their interests have been protected by the 1991 Constitution and are translated into three relevant rights to analyze the norm demanded in the present process:

1. The right to the truth, that is, the possibility to know what happened and to look for a coincidence between the procedural truth and the real truth. This right is particularly important in the face of serious human rights violations.

2. The right to have justice done in the specific case, i.e. the right not to have impunity.

3. The right to reparation for the damage caused to them through financial compensation, which is the traditional way in which the victim of a crime has been compensated.

Although the guarantee of these three rights is traditionally in the interest of the civil party, it is possible that in certain cases the civil party is only interested in establishing the truth or achieving justice, and neglects to obtain compensation. This may be the case, to cite but one example, in the case of crimes against public morality, public property, or collective rights, or where the material damage caused is negligible - because, for example, the damage is diffuse or the public property has already been restored - but the truth of the facts has not been established, nor has it been determined who is responsible, in which case the victims have a real, concrete and direct interest in having their rights to the truth and to justice guaranteed through the criminal process.

However, this does not mean that any person who alleges that he or she has an interest in the truth being established and justice being done can become a civil party - claiming that the crime affects all members of society - nor that expanding the possibilities of participation to civil actors interested only in the truth or justice can transform the criminal process into an instrument of retaliation against the accused. There must be real damage, *not necessarily of a* specific, concrete, *patrimonial content*, that legitimizes the

participation of the victim or of the injured in the criminal process in order to seek the truth and justice, which must be appreciated by the judicial authorities in each case. Once the quality of victim has been demonstrated, or in general that the person has suffered a real, concrete and specific damage, whatever the nature of this, he is legitimated to constitute himself as a civil party, and can orient his claim to obtain exclusively the realization of justice, and the search for truth, leaving aside any patrimonial objective. Moreover, even if the property damage is compensated, when it exists, if it has an interest in truth and justice, it can continue to act as a party. This means that the only essential procedural budget to intervene in the process is to prove the concrete damage, without being able to demand a claim tending to obtain the patrimonial reparation.

The determination in each case of who has the legitimate interest to intervene in the criminal process also depends, among other criteria, on the legal good protected by the norm that typified the conduct, its injury by the punishable act and the damage suffered by the person or persons affected by the prohibited conduct, and not only on the existence of a quantifiable property damage.

Having clarified the constitutional rights of the victim within the criminal process, the Court now analyzes whether the manner in which the legislator has regulated the intervention of the civil party within the criminal process in Article 137 is in accordance with the Charter and guarantees the effectiveness of the rights to redress, truth and justice.

5. The requirement that the civil party be involved in criminal proceedings through a lawyer does not constitute a violation of the right to equal access to justice, nor does it restrict the scope of the rights of victims or victims of crime.

The actor's first question refers to an alleged violation of equality in access to justice, by demanding that the civil party always intervene through a lawyer, whereas, in his opinion, this request is not made to the defendant.

The Court does not share this challenge for several reasons. In the first place, it is not true, as the plaintiff suggests, that in criminal law the defendant can make his defense without a lawyer, since the validity of procedural actions in criminal matters is tied to the fact that the defendant has a technical defense. Secondly, article 229 of the Constitution establishes as a general rule access to justice by means of a judicial power of attorney, and as an exception, in cases where indicated by the legislator, the possibility of doing so without the representation of a lawyer. As this Corporation recently pointed out:

> "(...) the relationship that article 229 of the Constitution makes between the administration of justice and the intermediation of a legal professional is not indifferent because, when technical intervention is required, the presence of someone versed in law cannot be taken as interference, but as a guarantee that the accused will have a fair trial - article 29 C. P.-, because this professional will put his knowledge at the service of justice, with a view to the reasons of his principal being heard and the right of the same valued, within the legal parameters and taking into account the rules specific to each

process.

> "The Court, in different pronouncements, on the occasion of the examination of the provisions of the Statute of the Lawyer - under study - and of other precepts of identical or similar content, has declared in accordance with the Political Constitution the norms that develop the constitutional principle of requiring, as a general rule, the intervention of a legal professional to litigate in his own and other people's cases, - articles 25, 28, 29, 31 and 33 D. l. 196 of 1970; 138, 148 inc. 2º, 149 and 150 D. l. 2700 of 1991; 46, 63 and 67 C. of P. C.; and 2º and 3º Law 270 of 1996-. And contrary to this principle, the provisions that do not know such a provision - articles 34 D. l. 196 of 1971; 148 inc.1, 161 (partial), 322 (partial) and 355 of D. l. 2700 of 1991; and 374 of Decree-Law 2550 of 1988. (…)"

The legislator, within the freedom of configuration granted by Article 229, can define when participation in a judicial process requires the assistance of a lawyer and when the substantial rights of the participants in a particular process are best protected if there is both a technical and a material defense.

In addition, the Court finds that a provision similar to the one studied in this subsection, challenged, as in this case, for violating the right to equality by requiring action through an attorney, was declared exequable by the Court in Ruling C-069 of 1996. The court said then:

> "With regard to the administration of justice, the presence of a lawyer guarantees the principles of celerity, efficacy, efficiency and morality that are preached from all state functions and not only from the administrative one (art. 209 C.P.).), because the performance of the different procedural acts in the judicial processes in which the lawyer is involved, many of which are highly complex, require special knowledge, skills, abilities and legal technicalities, in order to ensure the regularity of the judicial function and activity; moreover, the ethical training received in conjunction with the legal training obviously also contributes to the achievement of this objective. Identical reflections are valid for the requirement of an attorney for administrative actions, with respect to which due process is also preached".

For the reasons set out in section 6.2 of this Order, the Court will follow this precedent reinforced by the above arguments. The intervention of the civil party through a lawyer not only does not violate the right to equality, but is aimed at ensuring the effective enjoyment of the rights to truth, justice and reparation of the civil party. However, this does not mean that the existence of a technical defence can prevent their material defence (that of the victim or the injured party), nor that the requirement for a lawyer can constitute an obstacle to the guarantee of their rights. The material and technical defence is aimed both at clarifying the truth and at achieving justice in the specific case, as well as at obtaining the

necessary economic reparation. For this reason, both the victim or the injured party and his or her representative may request the taking of evidence, they have the right to be notified of the different procedural actions as well as to dispute all those that may affect their rights to truth, justice and redress.

The victim or the injured party and his or her representative constitute a single party: the civil party. Their involvement in the process must be governed by the principle of equality. As a result, the victim or the injured party may, directly, lodge appeals and request the taking of evidence.

Therefore, the Court does not find that the constitution of a civil party by means of a lawyer constitutes an obstacle to access to justice for the civil party that generates an inequality between the civil party and the accused. This requirement is in accordance with the Charter and is aimed at guaranteeing the rights of the civil party, and the Court will declare this in its ruling.

However, since the possibilities of intervention of the civil party are closely linked to the broad conception of its rights and the norm refers exclusively to its economic interests, the Court will declare that the first paragraph of Article 137 of Law 600 of 2000 is enforceable on the understanding that the civil party has the right to compensation, truth and justice under the terms of the present sentence.

6. The scope of action of the civil party in criminal proceedings, in the light of the broad conception of its rights.

According to the plaintiff, the defendant norm limits the victim's rights to access to the file during the investigation stage and the opportunity to become a civil party, by determining that the constitution of a civil party is made from the decision to open an investigation. Although article 137 of Act No. 600 of 2000 makes no express mention of access to the file (article 30, Act No. 600 of 2000) or of the opportunity to become a civil party (article 47, Act No. 600 of 2000), the Court finds that such obstacles are intimately linked to the term "criminal proceedings", the content of which is clarified by other provisions of the Code of Criminal Procedure, including the aforementioned articles of Act No. 600 of 2000.

Although there are other norms contained in Law 600 of 2000 that are also closely related to article 137 of the Code of Criminal Procedure, the plaintiff only questioned the restrictions on access to the file during the preliminary investigation and the indication of the moment of constitution of the civil party only from the opening of the investigation, so the Court will limit itself to these two aspects.

The Court proceeds to determine if in the present case the assumptions for the conformation of the normative unit are given, and if so, it will pronounce on the constitutionality of said unit in light of the conception of civil party established in the previous sections.

6.1. Conformation of the normative unit

According to the doctrine of this Corporation, the integration of normative unity only proceeds in an exceptional manner. As this Corporation has held it:

> "(...) exceptionally, the Court may rule on the constitutionality of ordinary laws that are not subject to prior or unofficial control, even though no lawsuit has been filed against them. These are those events in which the integration of the regulatory unit proceeds. However, in order that, under the pretext of the stated figure, the Court does not end up being the unofficial judge of the entire legal system, the jurisprudence has indicated that the formation of the normative unit is appropriate, exclusively, in one of the following three events.
>
> In the first place, the integration of the normative unit proceeds when a citizen demands a provision that, individually, does not have a clear or univocal deontic content, so that, in order to understand it and apply it, it is absolutely essential to integrate its normative content with that of another provision that was not accused. In these cases it is necessary to complete the defendant's legal proposal in order to avoid an inhibitory ruling.
>
> Secondly, the configuration of the normative unit is justified in those cases in which the contested provision is reproduced in other norms of the legal system that were not sued. This hypothesis is intended to prevent a failure of inexequibilidad from being harmless.
>
> Finally, the integration of legislation is appropriate where, despite the fact that none of the above hypotheses has been verified, the rule in question is intrinsically linked to another provision which, at first sight, raises serious doubts as to its constitutionality. Consequently, in order for regulatory integration to proceed on this last ground, two different and concurrent requirements must be verified: (1) the challenged standard has a close connection with the unchallenged provisions that would form the normative unit; (2) the non-accused provisions appear, at first sight, apparently unconstitutional. In this regard, the Corporation has stated that "it is legitimate for the Court to enter into a study of the global regulation of which the norm in question forms part, if such regulation appears prima facie of a doubtful constitutionality" (Judgment C-320/97 (M.P. Alejandro Martínez Caballero).
>
> "With the exception of the three cases mentioned above, the integration of the normative unit is in no way conducive."

In the present case, the phrase "the injured party or his successors, through a lawyer, may

become a civil party in the criminal proceedings" does not have a clear deontic content, so we are in the first hypothesis, which makes it necessary to determine what is the scope of such expression. Since article 47 of Law 600 of 2000 defines the moment of constitution of the civil party within the criminal process, there is a close relationship between this locution and the mentioned article. Likewise, and since the plaintiff questions the fact that the possibility of access to the file is limited to the civil party during the preliminary investigation stage, there is also a close relationship between the norm demanded and article 30 of Law 600 of 2000.

The Court therefore proceeds to examine whether or not, in the light of the rights of victims or those harmed by a crime to truth, justice and reparation, the above provisions are unconstitutional or not.

However, before proceeding with such an analysis, it is necessary to determine whether, given that there is an earlier ruling by the Court on the constitutionality of a text similar to Article 47 of Law 600 of 2000, the Court should be at the earlier decision.

6.2. The effects of a substantive constitutional res judicata on a judgment of enforceability

The second paragraph of Article 243 of the Political Charter establishes the following:

> No authority may reproduce the material content of the legal act declared unconstitutional for substantive reasons, for as long as the provisions that served to make the confrontation between the ordinary law and the Constitution subsist in the Charter.

In accordance with the above-mentioned constitutional provision, in order to determine whether the phenomenon of res judicata materialis present, four elements must be examined:

> A legal act has been previously declared unconstitutional.
>
> The defendant provision refers to the same normative meaning excluded from the legal order, that is, it reproduces it since the *material content* of the defendant text is the same as that which was declared unconstitutional. Such identity is assessed by taking into account both the wording of the articles and the context within which the provision being sued is situated, so that if the wording is different but the normative content is the same in the light of the context, it is understood that there has been a reproduction.
>
> That the previously judged reference text with which the "reproduction" is compared has been declared unconstitutional for *"substantive reasons"*, which means that the ratio decidendi of inexequibilidad must not have been based on a formal defect.

That *the constitutional provisions that served* as a basis for the substantive reasons in the previous trial of the Court in which the inexequibilidad was declared subsist.

When these four elements are presented, one is faced with the phenomenon of substantive constitutional res judicata and, consequently, the reproduced norm must also be declared unconstitutional for violation of the mandate provided for in Article 243 of the Political Constitution, since this limits the legislator's competence to issue the norm already declared contrary to the Fundamental Charter.

However, the concurrence of these four elements must be analyzed by the Court on a case-by-case basis, since each of them requires a process of interpretation aimed at specifying whether the assumptions established in the Constitution are met. In the case under study, article 47 of Law 600 of 2000 reproduces in identical terms the material content of article 45 of Decree 2700 of 1991. However, this rule was not invalidated but was declared enforceable in judgment C-293 of 1995, so we are not before the phenomenon of res judicata material in a strict sense, expressly regulated in Article 243 paragraph 2 of the Constitution, since nothing prevents the legislator from reissuing a rule declared enforceable, since if it was found adjusted to the Charter the legislator does not violate the Constitution by adopting a provision identical to the previous one.

In this case, since there is a previous ruling on the same matter that is the subject of this lawsuit, but which was declared enforceable, we are dealing with a precedent in respect of which the Court has several options. The first is to follow the precedent, by virtue of the value of preserving judicial consistency, the stability of the law, legal certainty, the principle of legitimate confidence and other values, principles or rights protected by the Constitution and extensively developed by the jurisprudence of this Court.

The second alternative is to depart from the precedent, using powerful reasons that respond to the criteria that the Court has also pointed out in its jurisprudence, in order to avoid the petrification of the right and the continuity of eventual errors. The Court may also reach the same conclusion as its previous judgement but for additional or different reasons.

In the present case, the Court opts for the second option mentioned above and departs from the precedent established in judgment C-293/95, because there are compelling reasons that justify that change. The Court goes on to specify such reasons in the present case.

6.3. The reconceptualization of the civil party and its implications within the criminal process. Change in the jurisprudence of the Court in civil matters.

The view of the civil party exclusively interested in seeking economic reparation within the criminal process was taken up by this Court in Ruling C-293 of 1995. In spite of the fact that this sentence was the object of four exemptions from voting in the sense of

accepting a broad constitutional conception of the scope of the civil party, the doctrine set forth therein was reiterated by sentences C-475 of 1997, SU-717 of 1998, C-163 of 2000 and C-1711 of 2000, among others. This shows that it is an influential and respected precedent that deserves careful analysis and contains a plausible interpretation that cannot be disqualified.
In accordance with judgement C-293 of 1995, the interest of the civil party in the criminal proceedings was essentially economic: to obtain compensation to repair the damage caused by the crime. For that reason, it was justified to restrict the scope of their participation at a stage where there was still no formal criminal process, such as the previous investigation. For the Court, this was necessary and desirable in order to prevent the "retaliatory spirits" of the victim from interfering with the investigation and the definition of the origin of the criminal action, which would be contrary to the liberal tradition where the State has a monopoly on the exercise of criminal action.

It is important to underline that the C-293 of 1995 defined the rights of the civil party in the light of the legislation in force, not from the text of the Constitution. In such a way that the premise from which the Court started was that the legislator could, with great breadth, define the rights of the civil party and that, given the definition then in force restricted to the indemnifying action, the charges presented by the plaintiff should be rejected. In addition, the Court expressly recognized that the legislator could vary the definition and scope of the institution of the civil party.

According to the jurisprudence of this Court, for a jurisprudential change not to be considered arbitrary, it must obey powerful reasons that lead not only to modify the solution to the specific legal problem but that prevail over the considerations related to the right to equality and legal certainty that would invite to follow the precedent. Within such reasons the Court finds that, in this case, the most relevant ones allude to the following points:

1) A change in the legal system that served as a normative reference for the previous decision, which also includes the consideration of additional norms to those initially taken into account.

2) A change in the conception of the normative referent due, not to the mutation of the opinion of the competent judges, but to the evolution in the currents of thought on relevant matters to analyze the juridical problem posed.

3) The need to unify precedents, by coexisting, before the present judgment, two or more found jurisprudential lines.

(4) The finding that the precedent is based on a doctrine in respect of which there was great controversy.

These four types of compelling reasons justify, in this case, the modification of the doctrine according to which the victim or injured party of a crime is only interested in the economic reparation of the damage caused to him or her.

In the first place, it is necessary to consider a broader normative reference than the one initially taken into account in judgment C-293 of 1995, in which the Court referred to the value of human dignity, participation, access to justice, the state monopoly of criminal action and the freedom of the accused, as the grounds for restricting the interests of the civil party within the criminal process to the purely economic. The normative reference considered in Judgment C-293 of 1995, did not include specific provisions on victims, such as the rules relating to the obligation of the Attorney General to protect victims and the obligation to adopt the necessary measures for the restoration of their rights (Article 250, paragraphs 1 and 4, CP). In addition, as noted in section 4.1. of this judgment, article 2 of the Constitution and concordant provisions establish the constitutional duty of judicial authorities to guarantee the effective enjoyment of the rights of persons within which victims and injured persons are included. These are other normative references which in the present judgment acquire full relevance. From these grounds, as well as from other principles also underlined in section 4.1. of this Order, it follows that an effective protection of the victim's rights requires that his access to the administration of justice be guaranteed in order to seek truth, justice and reparation.

Secondly, there has been a change in the conception of the normative reference, particularly in international human rights law. By 1995, the date of the above-mentioned judgement, the trend of international law - especially human rights law in the inter-American system - towards comprehensive protection of the rights of victims of serious human rights violations had not yet crystallized. In 2001, the Inter-American Court of Human Rights ruled that legislative measures that prevented victims of human rights violations from knowing the truth of the facts were contrary to the American Convention on Human Rights. Since according to article 93 of the Constitution, "rights must be interpreted in accordance with international human rights treaties ratified by Colombia," it is necessary that the doctrine of the Inter-American Court of Human Rights be evaluated by the jurisprudence of the Constitutional Court. In addition, the international factors mentioned in section 4.2 of this Order reflect a broad conception of the rights of victims and injured parties.

While changes in the conception of the rights of victims and injured parties refer to serious human rights violations, the trend in domestic legislation is not limited to such minimum protection but also includes less serious crimes. Similarly, the Colombian legislature has a margin of appreciation to modulate the scope of the rights of the civil party according to different criteria - among which are, on the one hand, the seriousness of the crime and, on the other, the situation of the accused, who may become significantly vulnerable - provided that it does not reduce such rights to mere pecuniary reparation.

Thirdly, it is necessary to unify the precedents in civil matters, since there are substantial differences in the treatment that the civil party receives within the military criminal process and that which it receives in the ordinary criminal jurisdiction. There are three directly relevant constitutional precedents that the Court has set in the field of military criminal justice.

In the first of these, Judgment C-740 of 2001, the Court conditioned the constitutionality of a provision that regulated the transfer to allege certain procedural subjects within the special procedure regulated by Article 579 of the Military Criminal Code, Law 522 of 1999, in which the civil party was not expressly included. The court said then:

> "It should not be forgotten that within military criminal proceedings, compensation for damages is clearly recognized as a right of the persons affected by the punishable act, but that it must be obtained before the administrative contentious jurisdiction.
>
> (...)
>
> That is to say, within the military criminal process, the actions of the civil party are established in a precise manner, limiting their actions to the procedural impulse to contribute to the search for the truth of the facts and that the issue of compensation for damages is concentrated in the Jurisdiction in Administrative Contentious Matters, expressly excluding the competence of the military criminal justice in this field.
>
> (...)
>
> "From the reading of this article it follows for the Court that in the case that the civil party has been constituted, in accordance with the provisions of Articles 305 to 310 of Law 522 of 1999, it may request evidence, as well as challenge the order that decrees it, since it must be understood that the second paragraph of Article 579, transcribed, stating that it will be transferred to the parties to request evidence includes the civil party, if it has been constituted within the process. (underlined out of text)

The second precedent of this constitutional conception of the victim's rights within the military criminal process is found in Judgment C-1149 of 2001, where this Court stated that the rights of the civil party were not limited exclusively to the search for economic reparation. The Court addressed the study of articles 107 and 321 of the Code of Military Criminal Procedure, which regulate the ownership of the compensatory action and the purposes of the constitution of the civil party within the military criminal process. He then said the following:

> "The purpose of the administration of justice is to make effective the material rights of persons and the procedures must serve to make effective in this case, the rights of victims and injured parties with the punishable act not only to reparation of the damage, but also, to know the reality of the facts through the respective investigation through the criminal process and to have justice done by punishing the offenders.
>
> (...)

> "The right of victims or injured parties with the criminal offense to resort to criminal proceedings comprises three (3) important rights that must be guaranteed equally within the respective process, namely: a) The right to know the truth of the facts; b) The right to justice; and c) The right to reparation of damages.

And finally, the third precedent is found in sentence SU-1184 of 2001, where the Court studied a petition for protection filed by the civil party against the decision of the Disciplinary Chamber of the Superior Council of the Judiciary that left the trial of a general in the hands of the military criminal justice for the events that occurred in Mapiripán. The Court noted the following:

> "(...) the victims of punishable acts have not only a patrimonial interest, but include the right to have the right to know the truth recognized and to have justice done. The right to know the truth implies the right to have the nature, conditions and manner in which the facts occurred determined and to have those responsible for such conduct determined. The right to justice or the right to justice implies the obligation of the State to investigate what happened, to prosecute the perpetrators and, if found responsible, to convict them. Hence, they have the status of procedural subjects.
>
> "In direct relation to the foregoing, it must be understood that the complex of due process -legality, due process in the strict sense, the right to defense and its guarantees, and the natural judge- are preached in the same way for the civil party. With regard to the right to justice and truth, it is decisive to establish whether a punishable act attributed to a soldier is an act related to service, since the responsibility derived from the existence or not of the aforementioned relationship will be different. In the same way, the first element to know the truth of what happened and establish who are responsible depends, to a great extent, on determining whether the act met these qualities. Thus, the Court considers that the civil party has a legitimate -right- interest in having the process processed before the natural judge. ”

These differences between the doctrine on the rights of civil parties in ordinary criminal jurisdiction, which restricted their rights to seek economic reparation, and the recent jurisprudence within the military criminal process, which also recognizes their rights to truth and justice, make it necessary for the Court to unify its jurisprudence in this matter in order to promote the right to equality.

A fourth reason justifies a change in the doctrine established in Judgment C-293 of 1995. In that judgment the opinion of the Court was strongly divided. The present modification does not violate the legitimate confidence -which justifies maintaining a precedent-, since a divided position such as that embodied in ruling C-293/95 does not have a clear vocation of

permanence nor can it generate the same expectation of stability as when a ruling is unanimous.

In addition, the Court is now pronouncing itself within a context of legislative transit in the area of criminal procedure, since two comprehensive reforms have been issued that have resulted in a new code of criminal procedure and, in addition, in a new code of military criminal procedure. Indeed, the issuance of the new penal codes (Law 599 of 2000), criminal procedure (Law 600 of 2000) and military penal codes (Law 522 of 1999), initiated a transitional phase in the penal system. This means that the confidence in the reiteration of the doctrine established by the Court, given the legislation in force in 1995, cannot be considered to have ended in the stability of the current regime, given that the legislative change was of such magnitude that it materialized in the issuance of new codes of criminal procedure framed by a criminal policy oriented, in part, towards the protection of human rights.

The reasons given allow us to affirm that the vision of the civil party only interested in economic reparation should be abandoned. The victim of a crime or those harmed by it have the right to participate in criminal proceedings not only to obtain pecuniary compensation, but also to enforce their rights to truth and justice. They may even intervene for the sole purpose of seeking truth and justice, without being required to prove property damage or a claim of this nature. Thus, the civil party is a procedural subject in the full sense.

This conception of the civil party has transcendence in the definition and scope of the participation of the victim or injured parties both during the preliminary investigation and within the criminal process. For example, if their rights are not limited to seeking economic redress, the request and submission of relevant documents and information may also be aimed at contributing to the clarification of the truth and reducing the risk of impunity and not just demonstrating the existence of a harm or quantifying the material harm. This conception also has implications both in terms of the remedies that may be brought against decisions that may affect their rights to truth and justice, and in terms of the need for measures that may undermine their rights to be known in a timely manner by the civil party so that they may be challenged. It is therefore entitled, for example, to challenge decisions that lead to impunity or fail to deliver justice. However, it is not for the Court in this process to pronounce on all the consequences of the constitutional conception of the civil party, since the Court must limit itself to studying the charges brought by the plaintiff against the norms challenged by him and the provisions so closely linked to it that they make up a normative unit.

The Court then proceeds to examine whether, in light of this broad constitutional conception of the rights of the victim and those harmed by a punishable act, the provision in question, together with the norms that make up the normative unit under study, are constitutional.

6.4. The scope of action of the civil party within the criminal process, in light of the broad constitutional conception of its rights to truth, justice and economic

reparation.

According to the plaintiff, the legislator, in order to protect the summary reserve, unconstitutionally restricted the possibility of intervention by the civil party before the opening of the investigation and limited its access to the file by requiring it to do so through the right of petition. Articles 30 and 47 of Law 600 of 2000, which define the scope of action of the civil party within the criminal process, read as follows:

> **Article 30.- Access to the file and provision of evidence by the injured party**. The victim or injured party, as the case may be, may exercise the right of petition before the judicial officer in order to obtain information or make specific requests and may provide evidence.
>
> The official must respond within 10 days.
>
> **Article 47.- Opportunity for the constitution of a civil party.** The constitution of a civil party, as an individual or popular actor, may be attempted at any time, starting from the resolution of the opening of the investigation.

Article 47 of Law 600 of 2000 provides for the opportunity to become a civil party in criminal proceedings. Prior to this time limitation, victims and injured parties cannot intervene. Article 30 of Act No. 600 of 2000 restricts access to justice for the victim or injured party on the condition that a right of petition must be submitted to the judicial authority. In this case we are faced with a mode limit for access to the file.

The reservation has been justified during the preliminary investigation stage in the interest of protecting the information collected during this stage. However, given that the purpose of the previous investigation is to determine whether the punishable act has occurred or not, whether the conduct is typical or not, whether the criminal action is not yet statute-barred, whether a complaint is required to initiate the criminal action, whether or not the complainant is entitled to initiate the action, whether or not there is any reason to exclude unlawfulness or guilt (article 322, Law 600 of 2000), not allowing the civil party to act during this stage or requiring that access to the file can only be done by means of a right of petition may lead to a definitive violation of its rights to truth, justice and reparation. Such limitations therefore constitute a serious impairment of the right of access to justice of the victim of a punishable act.

While it is true that the truth and justice within the criminal process depend on the information and evidence gathered during the preliminary investigation stage being free from strange interference or threats, the interest of protecting them cannot reach the point of violating the rights of the accused or the civil party, especially, when there are mechanisms through which the integrity of the file and the information gathered can be protected from possible attempts to disseminate or destroy it, such as the establishment of

criminal or other sanctions for those who violate the confidentiality of the indictment, or destroy evidence, without undermining the rights of the participants in the criminal proceedings.

Moreover, since the rights of the civil party are not based exclusively on a patrimonial interest, its rights to the truth and justice fully justify the civil party's intervention at the preliminary investigation stage. Indeed, with respect to the search for truth, the Court has already admitted this possibility in Judgment T-443 of 1994, where it stated the following:

> "The claim to know or to know the truth about the transcendental facts of existence - birth and death of human beings - that directly concern the person, exhibits an intimate relationship with diverse fundamental rights (CP arts. 11, 12, and 16) whose effectiveness depends on the person receiving judicial protection (CP art. 2).
> ....
> The situation of doubt and uncertainty about what happened in the course of a public activity referring to such transcendental events as the birth or death of a loved one, directly affects the free development of the personality, personal security and health of the petitioner".

Consequently, and in order to protect the rights of the civil party, the Court will declare the unconstitutionality of the expression "as of the decision to open an investigation" contained in article 47 of Law 600 of 2000, since the rights to truth, justice and economic reparation depend on the fact that during this stage the civil party is allowed to actively intervene by providing evidence and cooperating with the judicial authorities and knowing and disputing the decisions adopted during this stage, especially the decision not to formally open the investigation.

It will also condition the constitutionality of article 30 of Act No. 600 of 2000 on access to the file in the exercise of the right of petition, in the sense that once the civil party has been constituted, it will be able to access the file directly from the beginning of the preliminary investigation, but if it has not yet been constituted as a civil party, the victim or injured party must have access to the file in the manner provided for in article 30, that is, through the exercise of the right of petition.

The specific charges made by the plaintiff against the first paragraph of Article 137 of Law 600 of 2000 and the articles that form a normative unit with it have been analyzed up to this point. However, since the plaintiff demanded the entirety of article 137, it is necessary to examine the constitutionality of paragraphs 2 and 3 of article 137 of Law 600 of 2000, with two purposes. The first is to ensure that the Court's ruling on this matter is not innocuous, and the second is to examine the effect of the constitutional conception of the civil party in proceedings against the public administration. Therefore, the Court proceeds to answer the following legal questions:

> In crimes against public administration, does the displacement of the civil party by the Office of the Comptroller General of the Nation constitute a violation of its right

to access to justice?

In proceedings in which the Attorney General's Office is the victim, does its exclusion as a civil party constitute a violation of the right to access to justice?

In crimes against public administration, the displacement of the civil party by the Office of the Comptroller General of the Nation constitutes a violation of its right to equal access to justice.

Article 137, paragraph 2, of the Code of Criminal Procedure provides that in crimes against public administration, the civil party is, in principle, the legal person under public law who has been harmed, through his or her legal representative. However, when the syndicate is the same representative of that entity, the Comptroller's Office displaces the legal entity as a civil party when it deems it necessary for the sake of the transparency of the claim. The Court finds that displacing or excluding the civil party from the criminal process in crimes against public administration seriously affects its right of access to justice, since the presence of the Office of the Comptroller General of the Republic or of the territorial comptrollers within the criminal process does not guarantee its rights to truth, justice and reparation.

In effect, Article 267 of the Charter establishes that the constitutional purpose of the Comptroller's Office is to control the fiscal management of the administration and of individuals or entities that manage funds or assets of the Nation, for which it may even initiate criminal proceedings (Article 268, numeral 8, CP). However, although the Comptroller's Office has an interest in the recovery of public assets, that interest is neither exclusive nor exclusive, but principal, and may concur with the interest of the aggrieved entity in the recovery of lost assets, given that the entities are directly responsible for fiscal management and, therefore, also have an interest in pecuniary reparation.

In addition, the aggrieved entity may be interested not only in the recovery of public assets, but also, for example, in having an interest in clarifying in detail the facts and then examining the internal factors, of various kinds, that contributed to the realization of the punishable act. Therefore, the Court finds that the displacement or exclusion by the Comptroller's Office of the injured public entity violates its rights to access to justice (article 229, CP) and impedes the effective enjoyment of its rights to truth, justice and economic reparation.

Therefore, the Court will declare the unconstitutionality of the expression "in a prevalent manner and to displace the one constituted by the mentioned entities", contained in paragraph 2 of article 137 of Law 600 of 2000. Therefore, both the Comptroller's Office and the injured public entity may participate as a civil party in the criminal process.

In proceedings in which the Attorney General's Office is the victim, its exclusion as a civil party is not a violation of the right to access to the administration of justice.

A different situation is presented in paragraph 3 of article 137 of Law 600 of 2000, which states that when the victim of the crime is the Attorney General's Office itself, the civil party will be in charge of the executive director of the judicial administration or of a special attorney appointed for this purpose. Such a possibility is not contrary to the Charter for a number of reasons.

In the first place, because the principle of impartiality prevents the civil party and the judicial authority in charge of carrying out the investigation and accusations from concurring in the same person. Secondly, because the Attorney General's Office lacks legal personality, so it is not possible for it to become a civil party.

In these events, the Comptroller's Office may attend with the director of the judicial administration or the special representative appointed to defend the affected patrimonial interest.

Consequently, the Court finds that paragraph 3 of Article 137 of Law 600 of 2000 is not contrary to the Charter and will declare so in the operative part.

VII. DECISION

In view of the above, the Plenary Chamber of the Constitutional Court, administering justice in the name of the People and by mandate of the Constitution,

RESOLVES

First - Declare EXEQUIBLE, in relation to the charges studied, the first paragraph of Article 137 of Law 600 of 2000, in the understanding that the civil party has the right to redress, truth and justice under the terms of this sentence.

Likewise, declare **EXEQUIBLE,** in relation to the charges studied, the second and third paragraphs of Article 137 of Law 600 of 2000, except for the expression "in a prevalent manner and displace that constituted by the entities mentioned," contained in the second paragraph, which is declared **unequitable**.

Second: To declare EXEQUIBLE article 30 of Law 600 of 2000, in relation to the charges studied, on the understanding that the victims or injured parties, once they have become a civil party, can directly access the file.

Third - To declare EXEQUIBLE Article 47 of Law 600 of 2000, in relation to the charges studied, except for the expression "from the resolution of the opening of the investigation" which is declared **INEXEQUIBLE.**

Notify yourself, communicate, publish, insert yourself in the Constitutional Court Gazette and file the file.

MARCO GERARDO MONROY GOAT
Chairman

ALFREDO BELTRAN SIERRA
Magistrate

JAIME ARAUJO RENTERÍA
Magistrate

MANUEL JOSÉ CEPEDA ESPINOSA
Magistrate

JAIME CÓRDOBA TRIVIÑO
Magistrate

RODRIGO ESCOBAR GIL
Magistrate

EDUARDO MONTEALEGRE LYNETT
Magistrate

ALVARO TAFUR GALVIS
Magistrate

CLARA INÉS VARGAS HERNÁNDEZ
Magistrate

MARTHA VICTORIA SACHICA MENDEZ
Secretary General

THE UNDERSIGNED SECRETARY-GENERAL
OF THE CONSTITUTIONAL COURT

IT CONSTARS:

Magistrate Dr. Jaime Córdoba Triviño, does not sign the present one because at the time he was accepted as an impediment to intervene in the present decision.

MARTHA VICTORIA SACHICA MENDEZ
Secretary General

Clarification of vote to Judgment C-228/02

CIVIL PART IN MILITARY CRIMINAL PROCESS - Purpose/CIVIL PART IN CRIMINAL PROCESS - Directions in which consequences of new perspective of the role and purposes are projected (Partial clarification of vote)

In Ruling C-1149 of 2001, the Constitutional Court clearly established that the purpose of the civilian part of the military criminal process was not only the search for truth, but also the reparation of damages, justice and effective access to it. This new perspective of the role and purposes of the civil party is applicable in an identical way to ordinary criminal procedure and brings very important consequences that are projected in several directions: The first and one of the most important is that the civil party in the criminal process must have the same faculties and procedural rights as the defendant, such as, for example, direct access to the file, from the very moment of its existence or creation of the file, even if no decision has been issued to open an investigation; the owner of the protected legal property, whether he is called the injured party, victim of the punishable act, passive subject, heir or successor of them, must be able to intervene from the beginning of the previous investigation and have access to the file from the very moment it begins to be formed, even though it has not reached the stage of instruction and in the same conditions and with the same rights as the union. The foregoing is no more than a consequence of the new perspective pointed out by the Court with respect to the civil party, since it does not pursue a merely patrimonial interest, but also the search for truth, the realization of justice and effective access to it. The constitution of a civil party may exist even before the instruction stage. And what is more important than the new projection of the Constitution on the criminal procedure that is reflected especially on the civil part, brings as a consequence that the civil part has the same faculties and rights as the union and from the very moment that the latter enjoys them.

Reference: file D-3672

Lawsuit of unconstitutionality against article 137 of Law 600 of 2000, "For which the Code of Criminal Procedure is issued".

Speaker Magistrates:
Manuel José Cepeda Espinosa
Eduardo Montealegre Lynett

With the usual respect for the decisions of this Corporation, I proceed to partially clarify my vote, for the following reasons:

The Constitutional Court, in Ruling C-1149 of 2001, with a presentation by the undersigned, clearly established that the purpose of the civilian part of the military criminal process was not only the search for the truth, but also the reparation of the damage, justice and effective access to it. This new perspective of the role and purposes

of the civil party is applicable in an identical way to ordinary criminal procedure and brings very important consequences that are projected in several directions: The first and one of the most important is that the civil party in the criminal process must have the same faculties and procedural rights as the defendant, such as, for example, direct access to the file, from the very moment of its existence or creation of the file, even if no decision has been issued to open an investigation; the owner of the protected legal property, whether he is called the injured party, victim of the punishable act, passive subject, heir or successor of them, must be able to intervene from the beginning of the previous investigation and have access to the file from the very moment it begins to be formed, even though it has not reached the stage of instruction and in the same conditions and with the same rights as the union. The foregoing is no more than a consequence of the new perspective pointed out by the Court with respect to the civil party, since it does not pursue a merely patrimonial interest, but also the search for truth, the realization of justice and effective access to it.

As a consequence of the new constitutional dimension of the role of the civil party, the first paragraph of this judgment declares a conditioned exequibilidad of article 137 of Law 600 of 2000 and declares unequibilidad part of article 47 of the same law, with which it is clear that there can be constitution of civil party even before the investigation stage. And what is more important than the new projection of the Constitution on the criminal procedure that is reflected especially on the civil part, brings as a consequence that the civil part has the same faculties and rights as the union and from the very moment that the latter enjoys them.

Date ut supra.

JAIME ARAUJO RENTERIA
Magistrate