

Judgment T-366/18

RIGHT TO DUE PROCESS AND INTEGRAL REPARATION OF THE VICTIMS OF THE INTERNAL ARMED CONFLICT-Case in which compensation for permanent disability was denied to a victim of an anti-personnel mine explosion.

VICTIMS OF THE INTERNAL ARMED CONFLICT-Procedure of tutela as subjects of special constitutional protection

With regard to the protection of the fundamental rights of victims of the armed conflict who are disabled, constitutional jurisprudence has repeatedly and uniformly considered that the tutela action is the appropriate and effective judicial mechanism to guarantee the effective enjoyment of their fundamental guarantees. This is due to the doubly reinforced constitutional protection they are entitled to in view of the situation of extreme vulnerability in which they find themselves and which, therefore, obliges the State authorities to provide them with positive differential treatment.

INDEMNIFICATION FOR PERMANENT DISABILITY ARISING FROM TERRORIST EVENTS PROVIDED FOR IN THE SOCIAL HEALTH INSURANCE SYSTEM - Legal nature and regulatory framework

SPECIAL PROTECTION FOR VICTIMS OF THE ARMED CONFLICT WITH DISABILITIES-Constitutional jurisprudence

The jurisprudence of this corporation has insisted on the recognition of the status of victims of the internal armed conflict with disabilities as subjects of special constitutional protection and, therefore, on the need to provide them with special and preferential treatment, through the adoption of affirmative measures in their favour, aimed at satisfying each of their needs with a special degree of diligence and speed, in order to ensure the effective guarantee of their fundamental rights.

INDEMNIFICATION FOR PERMANENT DISABILITY RESULTING FROM TERRORIST EVENTS-Economic compensation created to repair the damage caused to the health and physical integrity of the victims of terrorist actions.

INDEMNITY FOR PERMANENT DISABILITY RESULTING FROM TERRORIST EVENTS-Recognition and payment without obstacles or administrative barriers that impede the effective guarantee of the fundamental rights of the victims of terrorist actions.

INDEMNIFICATION FOR PERMANENT DISABILITY RESULTING FROM TERRORIST EVENTS-Order to grant compensation to the victim for permanent disability as a victim of an anti-personnel landmine explosion

Reference:
File T-6.629.126

Action for protection brought by Valentina Vera Quiroz, as unofficial agent of Ángela Dayanna Rúales Álvarez, against the Unión Temporal Fosyga 2014.

Magistrate Rapporteur:
Luis Guillermo Guerrero Pérez

Bogotá D.C., four (4) September two thousand and eighteen (2018)

The Third Chamber of Review of the Constitutional Court, composed of Judges Alejandro Linares Cantillo, Antonio José Lizarazo Ocampo and Luis Guillermo Guerrero Pérez, presiding, in exercise of its constitutional and legal powers, has issued the following decision,

JUDGMENT

In the review of the tutela ruling handed down by the 40th Civil Court of the Bogotá Circuit on 2 February 2018, which upheld the ruling handed down by the 29th Municipal Civil Court of the same city on 12 January 2018, in the constitutional protection proceedings brought by Valentina Vera Quiroz, as the unofficial agent of Ángela Dayanna Rúales Álvarez, against the Temporary Union Fosyga 2014.

I. BACKGROUND

1. The application

On 6 December 2017, Valentina Vera Quiroz, acting as the unofficial agent of Ángela Dayanna Rúales Álvarez, filed a tutela action against the Temporary Union Fosyga 2014, seeking protection of her fundamental rights to due process and comprehensive reparation for the victims of the internal armed conflict, allegedly violated as a result of the refusal of that entity to approve, after numerous corrections, the administrative claim he submitted in order to obtain payment of *compensation for permanent disability*, payable by the Sub-account of the Catastrophic Risks and Traffic Accidents Insurance (ECAT), to which he considers he is entitled as a victim of a terrorist event (anti-personnel mine).

2. Relevant facts and claims

On **8 March 2013**, while travelling through the village of La Cabaña in the municipality of Puerto Asís (Putumayo) with her four-month-old niece in her arms, Ángela Dayanna Rúales Álvarez, who was **14 years old** at the time ^[1], was the **victim of an anti-personnel mine explosion** ^[2] which caused the amputation of both lower limbs and the death of her niece ^[3].

2.2. As a result of these events, she was assessed with a **79.2% loss of working capacity**, according to a report ^[4] issued by the Regional Disability Assessment Board of Bogotá on 30 August 2013.

On **12 November 2013**, Mr. Ángel David Rúales Araujo, father of Ángela Dayanna Rúales Álvarez, filed, on her behalf and in her presentation -because she is a minor-, an administrative claim before the then Unión Temporal Nuevo Fosyga, today Unión Temporal Fosyga 2014, in order to obtain the payment of *compensation for permanent disability*, a benefit established in the General System of Social Security in Health in favour of the victims of terrorist events in the framework of the internal armed conflict. The application, together with the respective supporting documents, was assigned case number **51011209**.

On **11 February 2014**, in response to his complaint ^[5], the respondent entity informed him that, once the corresponding audit process had been completed, the application had not been approved. This, under the grounds for glossing ^[6] consisting of the absence of the following documents: (i) "*certificate from the Personería Municipal de Puerto Asís*

in original"; (ii) "*authentic copy of the civil registry of birth of the victim*"; (iii) "*certificate of permanent disability in original*"; and (iv) "*total or partial absence, inconsistency, amendments or illegibility of the power of attorney granted to the beneficiary by his spouse, or civil registry of death of the latter, for the collection of full compensation*".

2.5. Consequently, on **25 April 2014**, he filed a letter of correction of glosses ^[7]with respect to claim no. 51011209, attaching, for these purposes, the documentation related to the communication of 11 February and the respective technical form completed. However, in response on **23 July 2014**, for the second time, the respondent entity informed him that his claim had not been approved, invoking the following reasons for glossing: (i) "*the FURPEN form must be submitted in original, fully completed and signed in all its sections by the beneficiary of the victim. It did not fill in number II in the telephone field*"; (ii) "*submit the original certificate of the opinion of permanent disability, signed by those involved in the document*"; (iii) "*attach the power of attorney duly granted by the other parent of the victim or the civil registry of death of the father in the event that he is deceased*" ^[8].

2.6. Consequently, again on **1 September 2015**, the father of the victim filed, for the second time, a letter of correction of glosses ^[9]clarifying that he attached only the documents required in the response of 23 July 2014, given that those provided with the correction of 25 April 2014, were never returned by the entity. However, by communication of **3 March 2016** ^[10], for the third time, the defendant did not approve the request, citing reasons for glosses related to documents previously provided and others that had not been required until that time, such as, for example, a bank certificate from an entity supervised by the Superintendency of Finance that accredited the beneficiary of the claim as the account holder.

2.7. This situation was repeated on several occasions in which, once the claim was denied, the petitioner corrected the imposed glosses, filing the required supports and, once again, the Temporary Union Fosyga 2014 persisted in its decision not to approve the request, again alleging the lack of some document that, in general, had already been provided or had not been required before.

2.8. As a result, on **10 March 2017** ^[11], having reached the age of majority, Ángela Dayanna Ruares Álvarez requested, on her own behalf, the payment of *compensation for permanent disability*, objecting to the glosses applied in the immediately preceding communication (6

December 2016) and providing the corresponding documents. However, in a communication of **6 July 2017**^[12], for the fifth time, the respondent entity informed him that, having exhausted the comprehensive audit process of his request, it had not been proven, citing the grounds for glossing referring to: (i) that the correction was filed outside the term of two (2) months established in article 24 of Resolution 1645 of 2016; and (ii) that in the bank certification provided, the ownership of the account did not correspond to the beneficiary of the claim, but to her father.

2.9. Consequently, on **23 August 2017** ^[13], he filed the last written correction, attaching a new certification issued by the Banco Agrario de Colombia on 1 August 2017, which indicated that he was the holder of a savings account in that entity, but, for the sixth time, the Unión Temporal Fosyga 2014 ratified the cause of gloss applied, by communication of **8 November 2017** ^[14].

2.10. Thus, after taking numerous steps to obtain *compensation for permanent disability*, providing all the documents required to prove her status as a victim of a terrorist act that caused the amputation of both lower limbs and, therefore, made her worthy of this benefit, without obtaining a favourable response to her request, the young Ángela Dayanna Rúales Álvarez, through her ex officio agent Valentina Vera Quiroz, an active member of the Legal Consultancy of the Universidad de los Andes [15] , brought this action for protection, in order to obtain the present tutela action, through her unofficial agent Valentina Vera Quiroz, an active member of the Legal Clinic of the Universidad de los Andes ^[15], filed the present tutela action, seeking protection of her fundamental rights to due process and comprehensive reparation for victims of violence and, as such, ordering the Temporary Union Fosyga 2014 to approve claim no. 51011209 and to proceed with the payment of the benefit. 51011209 and proceed to pay the compensation claimed.

2.11. As grounds for the constitutional protection sought, it argued that the grounds for glossing adduced by the Unión Temporal Fosyga 2014, related to the alleged untimeliness in the filing of the letter of correction of 10 March 2017 and the absence of the formal requirements of the bank certification provided with the application, are not in line with the reality of the facts.

2.12. In this regard, he clarified that the communication of 6 December 2016, by which the claim for compensation was not approved for the fourth time, was sent on 27 December 2016, through the company Servicios Postales Nacionales 4-72 with the guide number

RN690432255CO, and received at its address for notifications on **12 January 2017**, as evidenced in the corresponding traceability record ^[16], so that the correction presented on **10 March 2017** was made within the term of 2 months following receipt of said communication. She also explained that, as of 20 September 2016, her father provided, with the corresponding letter of correction, the bank certification ^[17] in which he was listed as the holder of a savings account, given that, at that time, she was a minor. However, she emphasised that, with the correction submitted in her own name on 23 August 2017, she attached a certificate issued by the Banco Agrario de Colombia on 1 August 2017 ^[18], in which she stated that she was the holder of a new savings account, but this document was not taken into account by the auditing firm.

3. Procedural steps and response to the tutela action

By order of 11 December 2017, the 29th Municipal Civil Court of Bogotá admitted the tutela action and, with the aim of duly forming the opposing parties, ordered that it be transferred to the Temporary Union Fosyga 2014, as well as linking the Unit for the Attention and Integral Reparation of Victims and the Office of the Personería of Bogotá, so that they could pronounce themselves on the facts that motivated it and the claims filed. However, on expiry of the time limit set for this purpose, only the Temporary Union Fosyga 2014 and the Personería de Bogotá complied with the injunction.

3.1. Temporary Union Fosyga 2014

The Unión Temporal Fosyga 2014, through its legal representative, responded to the tutela action, by means of a letter in which it objected to the prosperity of the requested protection.

By way of illustration, he began by pointing out that the Unión Temporal Fosyga 2014, by virtue of consultancy contract No. 043 of 10 December 2013 signed with the Ministry of Health and Social Protection, is the firm in charge of carrying out the health, legal and financial audit of the claims submitted by natural persons to obtain the benefits granted from the resources of the General System of Social Security in Health. It indicated that the verification and control procedure to obtain payment of these claims is regulated in Resolution 1645 of 2016, issued by the Ministry of Health and Social Protection.

With regard to the situation raised by the plaintiff, he explained, verbatim, as follows:

"ÁNGELA DAYANA RÚALES ÁLVAREZ filed a claim for compensation for permanent disability 51011209, on the occasion of the terrorist event that occurred on 08 March 2013. The claim was initially filed through Mr. ÁNGEL DAVID RUALES and subsequently by the claimant.

The first filing was made by ANGEL DAVID RÚALES on 12 November 2013 before the Nuevo Fosyga Temporary Union (previous auditing firm, under Contract No. 055 of 2011 signed with the Ministry of Health and Social Protection). 055 of 2011 signed with the Ministry of Health and Social Protection), the claim underwent the audit process and was left with status Not Approved in package 18051, its result was reported by letter UTNF-DO-2190 dated February 7, 2014, with the return of the documents being made by means of the UT-DEV-002462 act, provided by the plaintiff to the writ of tutela.

The second filing was made by ANGEL DAVID RÚALES on 25 April 2014 before the Temporary Union Fosyga 2014, to remedy the imposed glosses, remaining with status Not Approved in package 19020, its result was communicated through the letter UTF2014-OPE-1504 dated 07 November 2014, sent with the guide No. RN271422926CO of the company national shipping services 472, but it was returned for the reason of 'incorrect address'; however, a second shipment was made with guide No. RN271422926CO of the company national shipping services 472, but it was returned for the reason of 'incorrect address'. RN271422926CO of the national shipping services company 472, but said shipment was returned for the reason 'incorrect address'; however a second shipment was made with the guide 236767512 of Aeromensajería, but it was also returned for the same reason, reason for which the claim documents were delivered by the Temporary Union to FOSYGA, today ADRES for safekeeping, as shown in the attached supports.

The third filing was made by ANGEL DAVID RÚALES on 01 September 2015, to remedy the imposed glosses, remaining with status Not Approved in package 20026, its result was communicated through the letter UTF2014-OPE-10750 dated 03 March 2016, making the return of the documents through

the act UT-DEV-6165, forwarded with the guide No. RN533815165CO of the company Servicios de envíos Nacionales 472, which was received on 18 March 2016 at the Legal Office of the Universidad de los Andes.

The fourth filing was made by ANGEL DAVID RÚALES on 20 September 2016, to remedy the glosses imposed, remaining in status Not Approved in package 21064, its result was communicated through letter UTF2014-OPE-15431 dated 06 December 2016, sent with guide No. 265099897 of Aeromensajería, which was returned. However, the second shipment was sent with waybill No. RN690432255CO from the company Servicios de envíos Nacionales 472 and was received on 12 January 2017.

The fifth filing was made by the plaintiff on 10 March 2017, it remained in final status Not Approved in package 22039, its result was communicated through the letter UTF2014-OPE-23332 dated 06 July 2017, sent with the guide No. RN78598363838CO of the company National Shipping Services 472, which was received on 07 July at the Legal Office of the University of the Andes.

The sixth filing was made by the claimant on 23 August 2017, the claim was included in package 22056, ratifying the glosses imposed, and its outcome was communicated through letter UTF2014-OPE-25827 dated 08 November 2017, forwarded with guide No. RN855891428CO of 472, as demonstrated in attached supports.

Regarding the filings of 20 September 2016 and later, Resolution 1645 of 2016 came into force on that date, which provides that the supports of the claims in Not Approved status are not subject to return to the claimants because they remain in the custody of FOSYGA, now ADRES, for the term referred to in Article 24 ibidem, after which, within the following month, they are definitively returned. ”.

However, it informed that "if Ms. ÁNGELA DAYANA RÚALES ÁLVAREZ disagrees with the result of the claim communicated with the letter UTF2014-OPE-25827, she may file the claim again, for which she must attach the same documents that she filed on 23 August 2017, together with the FURPEN (single claim form for natural persons) duly

completed in all its fields and signed by her, and an original bank certificate issued by a banking institution, with a handwritten signature and whose date of issue does not exceed 3 months. The above, taking into account that the one provided on 23 August this year is dated 01 August 2017, i.e. more than 3 months, as provided for in Resolution 1645 of 2016" [sic].

3.2. Personería of Bogotá D.C.

In response to the injunction, the representative of the Personería de Bogotá D.C. requested that this entity be disassociated from the tutela action, arguing that it lacked standing to bring the action, given that no allegations were made against it.

However, it reported that, according to the consultation of the VIVANTO system of the Unidad de Atención y Reparación Integral a las Víctimas, the young Ángela Dayanna Rúales Álvarez has been included in the RUV since 12 March 2007, for two victimising events: (i) forced displacement registered on 19 February 2007 and (ii) anti-personnel mine explosion that occurred on 8 March 2013.

Also, according to information obtained from the SINPROC system of the Personería of Bogotá D.C., on 22 May 2013, the Local Personería of Teusaquillo received a statement from the parents of the victim, from the municipality of Puerto Asís (Putumayo), in relation to the terrorist act of which she was a victim, and proceeded to register her in the RUV.

II. JUDICIAL DECISIONS

1. First instance

The 29th Municipal Civil Court of Bogotá, in a judgment handed down on 12 January 2018, declared the protection sought on behalf of Ángela Dayanna Rúales Álvarez inadmissible, after considering that the cause that gave rise to the tutela action had been overcome.

In his opinion, the respondent entity was able to demonstrate that it attended to and resolved the requests related to claim No. 51011209, as well as all the corrections that resulted from it, in order for him to be granted *compensation for permanent disability as a victim of a terrorist event that caused the loss of his lower limbs*. On this basis, she argued that if this procedure was not favourable to her interests, this was due to various inconsistencies, such as: having provided incomplete or out of

time documentation; and to the regulatory change introduced to its regulation, situations that did not benefit, at the time, the procedure carried out by the father and then by herself.

In any case, he warned that the right to obtain the payment of compensation for permanent disability is not subject to discussion and, therefore, he can present the claim again, submitting, in due form, all the documents required for this purpose, on the understanding that, if the request complies with the canons of law, it must be approved.

2. Contestation

The aforementioned decision was appealed in due course by the plaintiff, who ratified everything she had stated in her introductory brief and added that it is not true that the factual situation that gave rise to the request for protection has been overcome, given that the disregard of her fundamental rights still persists. This, if one takes into account that, despite proving her status as a victim of a terrorist act and her permanent physical disability, as well as making numerous efforts to obtain the compensation claimed, the Temporary Union Fosyga 2014 continues to deny her this benefit, without reasonable justification.

3. Second instance

In ruling on the appeal, the 40th Civil Court of the Bogotá Circuit, in a decision of 2 February 2018, upheld the first-degree ruling, based on the same reasons given on that occasion and reiterated that the respondent "*can once again exhaust the direct claim procedure before the respondent [...] with full compliance with the requirements and documents demanded*".

III. THE CONSTITUTIONAL COURT'S REVIEW OF THE TUTELA PROCESS

Having referred the tutela file in question to the Constitutional Court for possible review, the Selection Chamber Number Three, by Order of 12 March 2018, notified on 3 April 2018, decided to select it and assign it to the Third Review Chamber.

In accordance with the foregoing, this Chamber proceeds to rule in the tutela proceedings T-6.629.126.

IV. CONSIDERATIONS

1. Competence

The Constitutional Court is competent to review the decisions issued in the tutela action of reference, based on Articles 86 and 241-9 of the Political Constitution, in accordance with Articles 33, 34 and 35 of Decree 2591 of 1991, and in compliance with the Order of 12 March 2018, issued by the Selection Chamber Number Three of this corporation.

2. Statement of the legal problem

2.1. In accordance with the factual situation described in the background to this decision, the legal problem that it falls to the Court to resolve is the need to establish whether the Temporary Union Fosyga 2014 violated the fundamental rights to due process and full reparation of Ángela Dayanna Rúales Álvarez, by not approving, on six occasions, the claim that she submitted to that entity on 12 November 2013, in order to obtain recognition and payment of the *compensation for permanent disability* provided for in Law 100 of 1993, a financial benefit to which she considers she is entitled as a victim of the explosion of an explosive device (anti-personnel mine) which caused the amputation of her lower limbs and, consequently, caused her to suffer a 79.2% loss of working capacity.2%.

2.2. In order to resolve this question, the Third Chamber of Review will address the following issues: *(i)* the applicability of the tutela action in the present case; *(ii)* the regulatory framework governing compensation for permanent disability arising from terrorist events; and *(iii)* the victims of the internal armed conflict in a situation of disability as subjects of special constitutional protection in order to, finally, provide a solution to the specific case.

3. The validity of the tutela action

3.1. Standing to bring proceedings

3.1.1. Article 86 of the Political Constitution establishes that the tutela action is a judicial defence mechanism to which any person may resort to claim the immediate protection of their fundamental rights, whenever these are violated or threatened by the actions or omissions of the public authorities and, exceptionally, of private individuals, in the cases specifically provided for by law.

3.1.2. In line with this higher mandate, Article 10 of Decree 2591 of 1991, *[w]hich regulates the tutela action enshrined in Article 86 of the Political Constitution*, establishes the following:

"The tutela action may be brought, at any time and in any place, by any person whose fundamental rights have been violated or threatened, who shall act by himself or through a representative. Powers of attorney shall be presumed to be authentic.

The rights of others may also be granted when the holder of those rights is not in a position to promote his own defence. When this is the case, it must be stated in the application.

It may also be exercised by the ombudsman and municipal ombudsmen". (Underlining outside the original text)

3.1.3. In particular, with regard to the possibility of assuming the defence of third party rights when the holder is not in a position to do so himself, constitutional jurisprudence has clarified its scope, indicating the requirements that must be accredited for the correct exercise of informal agency. These requirements are:

"that the agent states that he is acting in that capacity and, on the other hand, that the holder of the allegedly violated rights is not in a physical or mental condition to promote his own defence. This manifestation, in any case, can be explicit or inferred from the tutela application, which means that the requirement is met either because the agent claims to act in this capacity or because the facts presented or the evidence reveals that it is through this mechanism that the action was intended to be directed. And, on the other hand, the impossibility of the holder of the allegedly injured rights may be physical, mental or derived from socio-economic circumstances, such as geographical isolation, the situation of special marginalisation or the circumstances of defencelessness in which the represented party finds himself, hence the verification that it was not reasonably possible for the aggrieved party to claim the protection of his rights always depends on the assessment of the elements of the case" ^[19].

3.2.4. In the case *sub judice*, the Chamber finds these assumptions to be accredited. In effect, (i) the law student and active member of the Legal Clinic of the Universidad de los Andes, Valentina Vera Quiroz, expressly stated in her application for guardianship that she is acting as the unofficial agent of the young Ángela Dayanna Rúales Álvarez, since she is not in a physical condition to promote her own defence. This is because (ii) she is a disabled person with a 79.2% loss of working capacity, as a result of the explosion of an antipersonnel mine that caused the loss of both lower limbs ^[20]and, in addition, she resides in the municipality of Puerto Asís (Putumayo), reasons that, together with the lack of economic resources, make it impossible for her to move to the city of Bogotá D.C. where the defendant company has its principal place of business.

3.2. Standing to sue and be sued

The Unión Temporal Fosyga 2014 is the firm contracted by the Ministry of Health and Social Protection to carry out the health, legal and financial audit of claims for traffic accidents, catastrophic events of natural origin and terrorist events, charged to the resources of the Solidarity and Guarantee Fund (Fosyga).

3.2.2 In that order, according to the provisions of Article 42.2 of Decree 2591 of 1991, it has standing as a passive party in the present case, given that it is an auditing firm which, by order of the Ministry of Health and Social Protection, is responsible for approving claims for the recognition and payment of compensation from the resources of the General System of Social Security in Health; and insofar as the violation of the fundamental rights under discussion is attributed to it.

Subsidiarity

3.3.1. Constitutional jurisprudence has repeatedly and uniformly indicated that the tutela action is an instrument of judicial defence of a subsidiary and residual nature, by virtue of which it is possible, through a preferential and summary procedure, to obtain immediate protection of fundamental constitutional rights whenever these are violated or threatened by the action or omission of the public authorities or private individuals in the cases expressly provided for by the legislator.

3.3.2. The subsidiary and residual nature means that it is only applicable in addition, that is, when there are no other means of defence that can be used, or when there are other means that can be used to prevent the

occurrence of an irremediable harm. In this regard, Article 86 of the Constitution expressly states that *"this action shall only proceed when the affected party has no other means of judicial defence, unless it is used as a temporary mechanism to prevent irremediable harm"*.

3.3.3. Under this orientation, it is understood that *"the tutela action, in general terms, cannot be used as an alternative, additional or complementary judicial means to those established by law for the defence of rights, as it does not seek to replace ordinary or special processes and, even less, to ignore the mechanisms provided within these processes to challenge the decisions adopted"* ^[21].

3.3.4. Thus, legal disputes in which the violation of fundamental rights is alleged should, in principle, be resolved through the various ordinary means of defence provided by law for these purposes and, only in the absence of such mechanisms or when they are not suitable or effective to prevent the occurrence of irremediable damage, is it appropriate to resort directly to the tutela action.

3.3.5. With regard to the protection of the fundamental rights of victims of the armed conflict who are disabled, constitutional jurisprudence has repeatedly and uniformly considered that the tutela action is the appropriate and effective judicial mechanism to guarantee the effective enjoyment of their fundamental guarantees. This is due to the doubly reinforced constitutional protection that they are entitled to given the situation of extreme vulnerability in which they find themselves and which, therefore, obliges the State authorities to provide them with positive differential treatment ^[22].

3.3.6 On this understanding, according to the evidentiary material in the case file, the Court notes that the present case involves a subject of special constitutional protection, given that it seeks to effectively guarantee the fundamental rights to due process and full reparation of a person classified with 79.2% loss of working capacity as a result of the explosion of an anti-personnel mine that caused the amputation of his lower limbs.

3.3.7. Thus, by virtue of the current circumstances of manifest weakness in which Ángela Dayanna Rúales Álvarez finds herself as a victim of an explosive device, the requirement to exhaust other possible judicial or administrative defence mechanisms would be ineffective and, therefore, the tutela action is the only means that meets the suitability, effectiveness

and speed for the purpose of safeguarding her fundamental rights to due process and full reparation.

3.4. Immediacy

3.4.1. The effectiveness of the tutela action for the protection of fundamental rights is directly related to the application of the principle of immediacy, a *sine qua non* requirement for the action to proceed, given that its primary objective is geared towards the current, immediate and effective protection of fundamental rights. In this context, constitutional jurisprudence has established that, since the element of immediacy is inherent to the protection that this mechanism provides to the rights of individuals, it necessarily entails that its exercise must be timely and reasonable ^[23].

3.4.2 With regard to the opportunity for its presentation, this corporation has been emphatic in pointing out that it must be exercised within a reasonable period of time that allows for the immediate protection of the fundamental right allegedly violated or threatened, since, otherwise, constitutional protection could be innocuous and, in turn, disproportionate to the purpose it pursues, which is none other than the current, immediate and effective protection of fundamental rights ^[24].

3.4.3. On this basis, the tutela judge will be responsible for weighing up and establishing, in the light of the specific case ^[25], whether the action was brought within a reasonable period of time, in such a way that, on the one hand, the effectiveness of the protection sought is guaranteed and, on the other, to avoid satisfying the claims of those who, due to their negligence and inactivity, came late to seek protection of their rights.

3.4.4 As explained in the background to this decision, the last response issued by the Temporary Union Fosyga 2014 to the corrections submitted by the plaintiff was dated **8 November 2017**, and was received at the headquarters of the Legal Clinic of the Universidad de los Andes on **14 November 2017**.

3.4.5. In this way, the Chamber finds that the requirement of immediacy is also duly accredited in the case under review, since the constitutional protection was filed within a reasonable and proportional period of time to the event that gave rise to the alleged violation, since the plaintiff filed the corresponding claim on **6 December 2017**, that is, twenty-two (22) days after having learned of the response issued by the respondent company.

4. Compensation for permanent disability arising from terrorist events provided for in the General System of Social Security in Health. Legal nature and regulatory framework

In development of article 48 of the Political Constitution, the Congress of the Republic issued **Law 100 of 1993**, which created the comprehensive social security system, aimed at ensuring the welfare and improvement of the quality of life of individuals by protecting them from the contingencies that affect them, especially those that undermine their health and economic capacity. Under this orientation, the design adopted by this statute to implement the comprehensive social security system was structured on the basis of four basic components: (i) the general health system; (ii) the general pension system; (iii) the general system of professional risks; and (iv) the complementary social services defined in the same law.

4.2. Particularly relevant to this case, the general social security health system includes, within its benefit plans, *care for traffic accidents and catastrophic events*. Indeed, article 167 of the aforementioned law ^[26] provides that in cases of emergencies caused by traffic accidents, **terrorist actions caused by bombs or explosive devices** and natural disasters, members of the health system "*shall be entitled to coverage of medical and surgical services, **compensation for permanent disability and death, funeral expenses and transportation costs to the health care centre***" (boldface outside the original text). It also establishes that, except in cases of traffic accidents, other events "*will be covered by the sub-account of the solidarity and guarantee fund*", while the National Government "*will regulate the procedures for the collection and payment of these services*".

In compliance with the above mandate, the President of the Republic issued **Decree 3990 of 2007**, which regulated the sub-account of the insurance of catastrophic risks and traffic accidents (ECAT) of the Solidarity and Guarantee Fund (Fosyga) and established the conditions of operation and insurance of the risks derived from bodily injuries caused to persons in traffic accidents, catastrophic and terrorist events. However, this regulation was expressly repealed by **Decree 56 of 14 January 2015**, which currently regulates "*the conditions of coverage, execution of resources, operation and complementary aspects for the recognition and payment of health services, compensation and expenses derived from traffic accidents, catastrophic events of natural origin, terrorist events*

and other events approved by the Ministry of Health and Social Protection" ^[27].

4.4. In relation to its scope, it should be noted that Decree 56 of 2015 excludes from its regulation the reparations to victims of the internal armed conflict referred to in Article 3 of Law 1448 of 2011 ^[28], which are governed mainly by the provisions of that law and Regulatory Decree 4800 of 2011 ^[29].

4.5. Having clarified this, with regard to the compensation to be awarded to victims for damages caused as a result of terrorist events, it should be noted that these are granted in two specific situations: *permanent disability* or *death*. In the first case, compensation is paid in proportion to the percentage of loss of working capacity in a minimum amount of 14 smldv and a maximum of 180 smldv ^[30]; and, in the second, in a single sum equivalent to 750 smldv ^[31], both charged to the ECAT sub-account of the Fosyga.

4.6. Specifically, **compensation for permanent disability** is regulated in article 12 of the aforementioned decree. According to this provision, "*it is the value to be recognised, once only, to the victim of a traffic accident, of a catastrophic event of natural origin, of a **terrorist event** or of those approved by the Ministry of Health and Social Protection in its capacity as Administrative Council of the Fosyga, when as a consequence of such events the victim loses the capacity to work*" (emphasis outside the text).

4.7. According to the provisions of Articles 13 and 15 below, the beneficiary and party entitled to file a claim for compensation for permanent disability is the *victim* ^[32] of the *terrorist event* ^[33] who, as a result of the same, has lost part of his or her capacity to work. To initiate this procedure, he or she has a period of one (1) year from the date on which the respective report of loss of working capacity issued by the competent authority became final ^[34].

4.8. With regard to the documentation required for the filing of the application, Article 27 determines that the application must be accompanied by the following documents:

- (i) a duly completed claim form to be adopted for this purpose by the Directorate for the Administration of Social Protection Funds of the Ministry of Health and Social Protection;

- (ii) a firm report of loss of working capacity issued by the competent authority, in accordance with the provisions of Article 142 of Decree-Law 019 of 2012, specifying the percentage of loss of working capacity;
- (iii) epicrisis or clinical summary of care issued by the Health Service Provider and certificate issued by the Municipal Council for Disaster Risk Management, stating that the person attended was a victim of catastrophic events of natural origin or terrorist events;
- (iv) when the claim is submitted to the Fosyga, a declaration by the victim stating that he/she is not affiliated to the General System of Occupational Risks and that he/she has not received a disability pension or compensation in lieu thereof from the General Pension System;
- (v) an enforceable court decision appointing a guardian, where the victim requires a guardian or representative;
- (vi) copy of the civil registry of the victim, when the victim is a minor, showing the relationship with the claimant in the first degree of consanguinity or an enforceable judgment designating the legal representative or guardian;
- (vii) original power of attorney by which the victim authorises a natural person to submit the application for payment of disability compensation.

4.9. In relation to the term for resolving and paying compensation, Article 38 provides that the claim will undergo a comprehensive audit process within two (2) months following the close of each filing period, which will be established by the Ministry of Health and Social Protection. It also foresees that, if there is room for the imposition of glosses as a consequence of said audit, the claimant shall be notified of all of them, who must correct them or object to them within two (2) months following the notification of their imposition, otherwise, they shall be understood to be accepted. In any case, the claim for compensation that is approved shall be paid within the month following the date of effective closure and certification of the comprehensive audit process.

4.10. However, it should be noted that Decree 56 of 2015 did not deal with regulating all aspects concerning the processing of claims under the

sub-account mentioned above and, in particular, the procedure for the recognition and payment of compensation for permanent disability. Hence, the Ministry of Health and Social Protection was given the power to "*adopt the requirements, criteria and conditions for the submission of claims, the conduct of the comprehensive audit and the payment of claims under the ECAT sub-account of the Fosyga*" (art. 39).

4.11. In compliance with this precept, the Ministry of Health and Social Protection issued **Resolution 1645 of 3 May 2016**, by which it established the requirements, criteria, conditions and procedure for the processing of claims for health and economic benefits charged to the ECAT sub-account of the Fosyga.

4.12. Specifically, with regard to the requirements and conditions for claiming compensation for permanent disability, it provides that in addition to the documents listed in Decree 56 of 2015, referred to above, the following must be attached:

- (i) "*if acting through a proxy, original power of attorney duly granted to a legal professional, with personal presentation and imprint of the principal and the proxy before the judge or notary, detailing the powers granted, accompanied by a legible photocopy of the professional card and identification document of the proxy*".
- (ii) "*bank account certification in original generated by the financial entity with an issue date of no more than three (3) months, whose holder is the beneficiary natural person, indicating the type of account, number, status, date of opening, branch and name and identification of the holder*" (art. 5).

4.13. With regard to the opportunity to file the claim, the aforementioned resolution specifies that the term is *1 year*, for those cases in which the right to claim was generated between 10 January 2012 and 8 June 2015 ^[35]; and *3 years*, for those cases in which the right to claim arose from 9 June 2015 ^[36] (art. 7). This is on the understanding that *the event giving rise to the right to claim*, when the relief requested is compensation for permanent disability, is the acquisition of finality of the decision on the loss of working capacity (art. 8).

4.14. Similarly, a verification and control procedure for the payment of claims, including compensation for permanent disability, was established. This is regulated in Chapter IV and comprises five stages, namely: (i) *pre-admission* ^[37]; (ii) *submission* ^[38]; (iii) *comprehensive audit* ^[39]; (iv)

communication of the audit result and response to it ^[40]; and/or (v) *payment* ^[41]. Given that, on this occasion, the legal issue raised is related to apparent irregularities arising during the stages of *comprehensive audit* and *communication of the result and response to it*, the Chamber will explain in detail the most relevant aspects of each of these stages.

4.15. The comprehensive audit, as provided for in article 16 of the aforementioned regulation, "*begins with the uploading of the information on the claims to the FOSYGA information system or whoever takes its place and concludes with the certification of the closing of the package in the same*". This stage takes place within two (2) months following the close of the filing period and, during this period, the FOSYGA validates compliance with the minimum verification aspects which, in the particular case of claims for permanent disability, are described in article 17-B of the same regulation ^[42].

4.16. Then, as a result of the comprehensive audit, one of the following statuses is applied to the claim: (i) *Approved*; (ii) *Partially approved*; and (iii) *Not approved*. Once the respective package has been completed and the quality validations have been carried out, a final closure certification is issued in the Fosyga information system (art. 18).

4.17. After the issuance of this certification, the *stage of communication of the result of the audit and response*, regulated in articles 20 to 25 of the aforementioned regulation, begins. During this stage, the Fosyga communicates the result of the comprehensive audit to the claimant within ten (10) calendar days following the issuance of the certification of the final closure of the package, by e-mail or, failing that, by means of a communication sent by registered mail to the address provided in the respective technical form (art. 22).

4.18. Once the result of the audit has been communicated -which is understood to have taken place on the date of receipt of the communication- (art. 23), the claimant has a maximum period of two (2) months to rectify or object, in a single opportunity, to the totality of the glosses applied, for which he/she must provide the corresponding documents or support in a concrete manner the reasons for objecting to them. The objection may not relate to new facts or dispute arguments different from those contained in the audit result (art. 24).

For this purpose, the respective form and technical annex must be filled in, indicating the number of the complaint and stating that it is a response to the audit result. If the interested party does not respond within the

indicated period, it will be understood that he/she has accepted the imposed gloss and, consequently, the claim acquires the status "Not approved" with definitive character.

However, the response to the audit result will be processed within the following two (2) months and will go through the same stages of the verification and control procedure referred to above. Likewise, it will be communicated to the complainant under the same conditions as previously stated, that is, under the terms of articles 22 and 23 of the aforementioned resolution.

4.19. In addition, it is established that unapproved claims will be subject to custody by the Fosyga, through the auditing firm contracted for this purpose, during the same period as the response to the audit result mentioned in the previous paragraph and that, in the event that during this period no such response is obtained from the claimant, the documents corresponding to the claim will be definitively returned in the following month.

4.20. Finally, it should be noted that, by virtue of the provisions of **Law 1753 of 2015** ⁴³¹ (National Development Plan 2014-2018), the Fosyga disappeared as a special account of the SGSSS and was replaced by the Administrative Entity of the Resources of the General System of Social Security in Health (ADRES). It therefore remained in force until the new entity came into operation, which took place on 1 August 2017. ⁴⁴¹

4.21. Similarly, by means of **Single Regulatory Decree 780 of 6 May 2016**, the National Government compiled and rationalised the pre-existing regulatory rules governing the health sector and, by virtue of this, incorporated Decree 56 of 2015, the provisions of which are contained in Part 6, Title 1, Chapter 4, Sections 1 to 4 of the Decree, into this instrument.

4.22. From the above normative account it can be concluded, then, that compensation for permanent disability resulting from terrorist events is an economic benefit established within the health care plans of the SGSSS, created with the aim of repairing the damage caused to the health and physical integrity of the victims of terrorist actions caused by bombs or explosive devices who, as a result of these events, have permanently lost their ability to work. This benefit is currently regulated in Law 100 of 1993, in Decrees 56 of 2015 and 780 of 2016, as well as in Resolution 1645 of 2016, and its financing is in charge of the funds of the sub-account of catastrophic risks and traffic accidents of the Fosyga, today

the Administrator of the Resources of the General System of Social Security in Health (ADRES). Specifically, it consists of the payment of a single sum of money to the beneficiary of the claim, the amount of which will correspond to the value determined according to the percentage of loss of working capacity. For its recognition and payment, the victim is required to exhaust the procedure established in the regulations in force, which consists of five stages, namely: (i) pre-adjudication; (ii) filing; (iii) comprehensive audit; (iv) communication of the result and response to it; and/or (v) payment, when applicable.

5. Victims of the internal armed conflict in a situation of disability are subjects of special reinforced constitutional protection.

5.1. It is well known that armed conflict has devastating public health consequences. The World Health Organisation (WHO) has associated high rates of disability, infant and adult mortality, morbidity, disease transmission and mental health impacts with this problem ^[45]. Within this scenario, the indiscriminate use of anti-personnel mines is perhaps the greatest source of disability in the population that is a victim of this scourge ^[46].

In numerous pronouncements ^[47], this corporation has warned about the extreme vulnerability of the victims of the internal armed conflict and, in particular, those who have acquired some type of disability as a result of the conflict, recognising the disproportionate impact of the violence and the massive violation of their fundamental rights, which means that they are included in the category of *subjects of special constitutional protection* ^[48].

5.3. The character of subjects of special constitutional protection entails, then, in accordance with the provisions of articles 1, 2, 13, 47, 90, 209 and 229 of the Political Constitution, the correlative duty of the State and, in general, of the public authorities, to provide this population in circumstances of manifest weakness with special and preferential treatment, oriented towards attending, with a high degree of diligence and speed, to all their needs in terms of health, rehabilitation and social integration, and to ensure the effective guarantee of their rights to truth, justice, reparation and non-repetition, recognised in the international sphere of human rights protection ^[49]. ^[50]

5.4. In this regard, among the affirmative actions that the State must adopt in their favour, constitutional jurisprudence has highlighted the obligation of public authorities to eliminate excessive and unjustified

barriers that victims with disabilities face for the effective enjoyment of their rights and that prevent them from accessing, in a timely and effective manner, the benefits that the law grants them to meet their needs and repair the damage caused ^[51].

5.5. Indeed, the Court has held that, when faced with normative provisions in favour of victims that seek to alleviate their situation of vulnerability, through measures of care, assistance and reparation, they must be interpreted and applied in accordance with the principles of favourability, good faith, legitimate trust and the prevalence of substantive law, always ensuring respect for their human dignity ^[52]. This is based on the consideration that *"the status of victim is a factual situation based on the suffering, not on the certification that indicates it, nor on the census that reveals the magnitude of the problem"* ^[53].

5.6. On this understanding, no judicial or administrative authority may impose burdensome requirements or conditions that imply an unreasonable or disproportionate burden for victims of violence in condition of disability for effective access to the assistance benefits recognised for their benefit, as this not only violates their fundamental guarantees, but also disregards the special protection that the constitutional order confers on them.

5.7. In summary, the jurisprudence of this body has insisted on the recognition of the status of victims of the internal armed conflict with disabilities as subjects of special constitutional protection and, therefore, on the need to provide them with special and preferential treatment, through the adoption of affirmative measures in their favour, aimed at satisfying each of their needs with a special degree of diligence and speed, in order to effectively guarantee their fundamental rights.

5.8. Thus, as explained in the previous chapter, compensation for permanent disability resulting from terrorist events is an economic benefit established within the health care plans of the SGSSS, created in order to repair the damage caused to the health and physical integrity of the victims of terrorist actions caused by bombs or explosive devices who, as a result of these events, have permanently lost their ability to work. This being so, the authorities and entities responsible for the recognition and payment of this benefit are obliged to provide victims with disabilities with special and preferential treatment, so as to allow them access to compensation, without obstacles or administrative barriers that prevent the effective guarantee of their fundamental rights.

Having made this clear, the Chamber now turns to the specific case.

6. Specific case

As stated in the background to this decision, on 12 November 2013, Ángela Dayanna Rúales Álvarez, initially through her father and then on her own behalf, filed a request with the Temporary Union Fosyga 2014 for recognition and payment of compensation for permanent disability, on the grounds that she had been assessed with a 79.2% loss of working capacity, as a result of the victimising event that occurred on 8 March 2013, when the explosion of an anti-personnel mine caused the amputation of both lower limbs.

According to the evidence in the file, the Chamber finds that the processing of the corresponding claim took approximately 4 years. During this period, the Unión Temporal Fosyga 2014 rejected the application on six occasions, citing formal arguments related to the lack of some document which, in general, had already been provided or had not been previously required. In the last communication sent to the claimant on 8 November 2017, the respondent entity based its refusal on two reasons for non-conformity or reasons for glossing: *(i)* the untimeliness in the filing of the letter of correction of 10 March 2017 and *(ii)* the provision of a bank certificate in which the beneficiary of the claim does not appear to be the account holder.

Therefore, the Court will examine whether the decision of the Temporary Union Fosyga 2014 not to approve the recognition and payment of the compensation for permanent disability requested by the respondent is in line with the constitutional mandates of special protection for victims of the internal armed conflict in condition of disability and with the regulatory framework applicable to this type of claims.

6.1. The argument relating to the untimeliness of the filing of the statement of correction of 10 March 2017.

6.1.1. As explained above, the claimant is notified of the result of the comprehensive audit in the terms described in articles 22 to 24 of Resolution 1645 of 2016, and has a period of two (2) months following receipt of such communication to respond to it, correcting or objecting to all of the glosses applied by the auditing firm. Otherwise, it will be understood that it has accepted them and, consequently, the respective item acquires, definitively, the status "not approved".

6.1.2. In the present case, the Chamber notes that, by communication of **6 December 2016**, the Unión Temporal Fosyga 2014 informed the father of the beneficiary, for the fourth time, that the comprehensive audit of his claim had been exhausted and that the claim had been "not approved". This communication was sent by registered mail on 19 December 2016, through the company *Aeromensajería*, but was returned the following 23 December, as acknowledged by the respondent company in its response to the tutela action and as evidenced by the copy of the waybill on *page 141* of the main file.

Consequently, a second shipment was made on 26 December 2016, this time by the company *Servicios Postales Nacionales 4-72*, with the waybill number RN690432255CO, which was effectively delivered at the headquarters of the legal office of the Universidad de los Andes on **12 January 2017**, as can be seen from the copy of the waybill and the traceability register on *folios 84 and 85* of the main file.

Thus, having received this communication on 12 January 2017, Ángela Dayanna Rúaless Álvarez, on her own behalf, filed on **10 March 2017**, a written response to the audit result, objecting and attaching the respective documentation to remedy the glosses applied. However, by communication of **6 July 2017**, the respondent entity again informed him that the claim had been "not approved", invoking the "untimeliness" of his response as a reason for the glossing. This, by taking as a reference the date of return of the first communication, i.e. 23 December 2016, and not the effective date of delivery of the second on 12 January 2017.

It should be added that, once the result of this audit had been challenged on 23 August 2017, the entity in question reaffirmed the imposed gloss, by means of a communication dated 8 November 2017.

6.1.3. Thus, it is clear that, contrary to the assertions made by the Unión Temporal Fosyga 2014, the written response to the result of the audit of 6 December 2016 was filed in a timely manner, i.e. within two (2) months of receipt of the respective communication. The foregoing, considering that the communication was delivered on 12 January 2017 and the correction was submitted on 10 March 2017, that is, three days before the deadline established in the regulations in force for this purpose ^[54].

6.1.4. In this context, at least as far as the argument of untimeliness is concerned, there is no basis for denying the recognition and payment of the compensation for permanent disability claimed by the plaintiff.

6.2. The argument relating to the provision of a bank certificate without the legal requirements being met

6.2.1. As explained in the preamble to this decision, the requirement to provide a bank certificate for the processing of the claim for compensation for permanent disability was introduced with the entry into force of Resolution 1645 of 2016, as Decree 56 of 2015 did not provide for such a requirement. Indeed, article 5 of the aforementioned resolution provided as follows:

"Article 5. Documents for claims submitted by natural persons. In addition to the documents listed in Articles 27, 28 and 29 of Decree 056 of 2015, in order to submit claims to the ECAT Sub-account of the FOSYGA, or whoever takes its place, natural persons shall attach the following documents:

[...]

2. Certification of bank account in original generated by the financial entity with date of issue not older than three (3) months, whose holder is the beneficiary natural person, where it indicates type of account, number, status, date of opening, branch and name and identification of the holder"
(underlined out of text).

6.2.2. However, in the case under review, it is noted that the Temporary Union Fosyga 2014, in a communication of 3 March 2016, when reporting on the result of the comprehensive audit, indicated that the claim had not been approved, based, among others, on the cause of gloss relating to the absence of bank certification. This, when Resolution 1645 of 3 May 2016, which established such a requirement, had not yet been issued.

6.2.3. This led the father of the victim, in his reply to the audit results of 20 September 2016, to express his opposition to this gloss, stating that the document had no legal or regulatory basis to be required as support for the claim ^[55]. Even so, she attached to her letter a certificate issued by the Banco Agrario de Colombia on 28 July 2016, which stated that a savings account had been opened in her name, since, at that time, Ángela Dayanna had just reached the age of majority and had not been issued with a citizenship card to hold a bank account ^[56].

6.2.4. Subsequently, when communicating the result of the subsequent comprehensive audit on 6 December 2016, the respondent did not mention anything in relation to the bank certification, which led to the inference that the gloss had been duly corrected.

6.2.5. However, in the aforementioned communication of 6 July 2017, while invoking the untimeliness in the filing of the correction letter of 10 March 2017, as already expressly referred to, it argued that the bank certificate provided by the applicant did not meet the requirements for this purpose, since the beneficiary of the claim was not the holder of the respective bank account.

6.2.6. Therefore, on 23 August 2017, Ángela Dayanna Rúales Álvarez provided, with the corresponding letter of correction, certification issued by the Banco Agrario de Colombia on 1 August 2017, visible on *page 90* of the main file, in which it is stated that she has a savings account in that financial institution. However, the Unión Temporal Fosyga 2014, in a communication dated 8 November 2017, ratified the reason for the gloss applied, resorting to the argument of untimeliness of the correction, which means that it did not take into account the new bank certification provided by the beneficiary.

6.2.7. In the above context, the Chamber notes that the document that was alleged to be missing or irregular within the procedure that is being questioned in this case never had such a connotation and, therefore, the decision of the Fosyga 2014 Temporary Union not to approve the recognition and payment of the compensation claimed, based on that justification, lacks any support.

6.2.8. The Chamber reached this conclusion after establishing that: (i) the bank certificate was required when it was not even a requirement for the aforementioned procedure, with clear disregard for the fundamental right to due process of the aggrieved party; however, (ii) in the corresponding correction, such a document was provided, even though the person who appeared as the account holder was not the beneficiary of the compensation, but her father as legal representative and initial claimant, given that she was a minor at the time. On this point, it should be noted that the current regulation on the matter does not provide in any of its sections the handling that should be given to the processing of the compensation for permanent disability when the beneficiary is a minor; (iii) since the validity of this certification was not questioned in the communication of the result of the comprehensive audit carried out on it, it could be understood that the cause for glossing had been remedied, so

that it was not possible to allege afterwards the fact that the beneficiary was not the holder of the bank account; (iv) however, having clarified in the preceding section that the letter of correction of 10 March 2017, to which the new certification from the Banco Agrario was attached, was submitted in a timely manner, it follows that this document must be assessed.

6.2.9. Thus, the summary of the actions taken by the Temporary Union Fosyga 2014 during the processing of the claim filed by Ángela Dayanna Rúales Álvarez, initially through her legal representative and then on her own behalf, shows, without a doubt, that it was carried out outside the legal framework established for the recognition and payment of compensation for permanent disability resulting from terrorist events, ignoring the fact that, as the victims of the internal armed conflict in a condition of disability are the beneficiaries of this benefit, compliance with the formal requirements must be evaluated with particular attention to the complex situation of vulnerability in which they find themselves ^[57], that is, in consideration of the special constitutional protection to which they are entitled.

6.2.10. Following this guideline, therefore, the constitutional principle of the prevalence of substantive law ^[58] inherent to the Social State of Law should have been applied and the audit of the documents submitted in support of the claim should have been made more flexible, if at least there was no doubt as to the applicant's status as a victim and the loss of her working capacity as a result of the explosion of an explosive device, circumstances which were fully accredited, given that they were not questioned by the defendant at any stage of the claim procedure.

6.2.11. However, it is noted that since Ángela Dayanna Rúales Álvarez is a subject of special constitutional protection due to her status as a victim of the internal armed conflict and her disability, the Temporary Union Fosyga 2014 imposed disproportionate and unreasonable burdens on her during the processing of her claim, to the point of subjecting her to more than four years of uncertainty; travel from the municipality of Puerto Asís (Putumayo) to the city of Bogotá D.C., where the headquarters of that entity is located; financial outlays to assume the cost of the supporting documents for the claim, some of which, it is worth noting, were repeatedly demanded of her despite having previously provided them with each correction; and, in general, to a series of unjustified procedures that have only hindered and delayed in time the effective access to her right to full reparation. This, without the slightest consideration for his state of disability or respect for his human dignity.

6.2.12. In this regard, it is worth mentioning what was stated in Judgment C-180 of 2014, regarding the scope of the right to reparation of the victims in the context of the internal armed conflict and the duty of the state authorities to facilitate their access in an agile, timely and effective manner to the mechanisms designed to give effect to this guarantee. On that occasion, the Court held that:

"In terms of reparation, victims have, in general terms, two rights: (i) to have and to be able to exercise an accessible, prompt and effective remedy to obtain reparation and (ii) to be adequately compensated for the harm suffered.

The first aspect of the right to reparation, i.e. the availability of an effective remedy, imposes different procedural obligations on the state in relation to the exercise of the right to reparation: (i) respect for the dignity of the victims; (ii) guarantee in terms of establishing means to enable victims to participate in the design and implementation of reparations programmes; and (iii) the duty to ensure adequate, effective and easily accessible mechanisms through which victims, without any discrimination, can obtain reparation that takes into account the gravity of the harm they have suffered and includes restitution, compensation, rehabilitation, satisfaction and measures to avoid repetition of the violations."

6.2.13. By virtue of the foregoing considerations, it can be concluded that the Unión Temporal Fosyga 2014, by refusing to approve the recognition and payment of the compensation for permanent disability claimed by Ángela Dayanna Rúales Álvarez, as a victim of the explosion of an anti-personnel mine which caused the amputation of her lower limbs and, consequently, the loss of 79.2 % of her capacity to work, without reasonable justification, based on excessive formalism and the irregular application of the regulations governing the processing of this claim, disregarded the special constitutional protection to which she is entitled and its obligation to provide her with special and preferential treatment in accordance with her situation of manifest weakness, thereby violating her fundamental rights to human dignity, to due process and to full reparation.

6.2.14. As a consequence of the foregoing, it is necessary to revoke the judgment handed down by the 40th Civil Court of the Circuit of Bogotá on 2 February 2018, which confirmed the judgment handed down by the

29th Municipal Civil Court of the same city on 12 January 2017, in the proceedings of the present tutela action and, in its place, grant the constitutional protection sought, ordering the Unión Temporal Fosyga 2014 or, whoever acts in its stead, to approve the claim filed under number 51011209 and, if it has not yet done so, to approve the claim filed under number 51011209 within ten (10) days of notification of this decision, within ten (10) days of notification of this decision, if it has not already done so, to approve the claim filed under number 51011209 and, therefore, to grant Ángela Dayanna Rúales Álvarez the compensation for permanent disability that is the subject of said claim, without requiring her to provide the same or additional documents to those already provided.

6.2.15. Likewise, the Temporary Union Fosyga 2014, or whoever acts in its stead, should be warned to refrain in the future from engaging in actions that create barriers or obstacles to the effective access of victims of terrorist events to the benefits granted to them by the General System of Social Security in Health and, in particular, those that gave rise to the present tutela action.

V. DECISION

In the light of the foregoing, the Third Review Chamber of the Constitutional Court, administering justice in the name of the people and by mandate of the Constitution,

RESOLVES:

FIRST.- TO REVERSE, for the reasons set out in this decision, the decision handed down by the 40th Civil Court of the Bogotá Circuit on 2 February 2018, which confirmed the decision handed down by the 29th Municipal Civil Court of the same city on 12 January 2018, in the tutela action brought by Valentina Vera Quiroz, in her capacity as the unofficial agent of Ángela Dayanna Rúales Álvarez, against the Temporary Union Fosyga 2014.

SECOND.- GRANT protection of the fundamental rights of Ángela Dayanna Rúales Álvarez to due process and comprehensive reparation for the victims of the internal armed conflict. Consequently, **ORDER** the Temporary Union Fosyga 2014, or whoever acts in its stead, within ten (10) days of notification of this decision, if it has not already done so, to approve the claim filed under number 51011209 and, therefore, to grant

Ángela Dayanna Rúales Álvarez the compensation for permanent disability that is the subject of said claim, without requiring her to provide the same or additional documents to those already provided.

THIRD.- WARNING the Temporary Union Fosyga 2014 or, whoever acts in its stead, that, in the future, it should refrain from engaging in actions that generate barriers or obstacles for the effective access of victims of terrorist events to the benefits granted to them by the General System of Social Security in Health and, in particular, those that motivated the present tutela action.

FOURTH: Send the communication referred to in Article 36 of Decree 2591 of 1991, for the effects contemplated therein.

Copy, notify, insert in the gazette of the Constitutional Court and comply.

LUIS GUILLERMO GUERRERO PÉREZ
Judge Rapporteur

ALEJANDRO LINARES CANTILLO
Magistrate

ANTONIO JOSÉ LIZARAZO OCAMPO
Magistrate
With clarification of vote

MARTHA VICTORIA SÁCHICA MÉNDEZ
Secretary General

¹¹The minor was born on 22 July 1998.

²¹See folios 66 to 68 of the main file.

³¹See folio 53 of the main file.

⁴¹See folio 54 of the main file.

⁵¹See folios 6 and 7, main file.

⁶¹According to the definition established in article 3.1 of Resolution 1645 of 2016, a gloss is understood as a non-conformity that partially or totally affects the recognition and payment of a claim, due to the existence of an error, an inconsistency, or the absence of any of the documents, requirements or data provided for in the regulations in force.

⁷¹See folios 8 to 9 of the main file.

⁸¹See folios 10 to 12 of the main file.

⁹¹See folios 19 to 20 of the main file.

¹⁰¹See folio 21 of the main file.

¹¹¹See folios 32 to 39 of the main file.

¹²¹See folios 40 to 41 of the main file.

¹³¹See folios 44 to 49 of the main file.

¹⁴¹See folios 50 to 51 of the main file.

¹⁵¹On page 3 of the main file, there is a certificate dated 5 December 2017, issued by Norberto Hernández Jiménez, in his capacity as director (e) of the Legal Clinic of the Universidad de los Andes, which certifies that the law student Valentina Vera Quiroz is an active member of that legal clinic.

¹⁶¹Document visible on folios 84 and 85 of the main file.

¹⁷¹Document visible at folio 89 of the main file.

¹⁸¹Document visible at folio 90 of the main file.

¹⁹¹Rulings T-926 of 2011, T-096 of 2016, T-120 of 2017 and T-196 of 2018.

²⁰¹Circumstances corroborated by the technical report issued by the National Institute of Legal Medicine and Forensic Sciences on 3 April 2013 (f. 67) and the opinion of the Regional Disability Rating Board of Bogotá issued on 30 August 2013 (f. 54).

²¹¹See, among others, judgments SU-544 of 2001, T-599 of 2002, T-803 of 2002, T-273 of 2006, T-093 of 2008, SU-037 of 2009, SU-037 of 2009, T-565 of 2009, T-424 of 2010, T-520 of 2010, T-859 of 2010, T-1043 of 2010, T-076 of 2011, T-333 of 2011, T-377A of 2011, T-391 of 2013, T-627 of 2013, T-502 of 2015 and T-022 of 2017.

²²¹See, among others, judgments T-025 of 2004, T-853 of 2011, T-360 of 2012, T-732 of 2013, T-032 of 2015, T-083 of 2017 and T-478 of 2017.

²³¹Rulings 1043 of 2010 and T-022 of 2017.

²⁴¹Judgments T-797 of 2013, T-022 of 2017 and T-153 of 2017.

²⁵¹Rulings T-604 of 2004, T-022 of 2017 and T-153 of 2017.

ARTICLE 167.-Catastrophic risks and traffic accidents. *In the cases of emergencies generated in traffic accidents, in terrorist actions caused by bombs or explosive devices, in natural catastrophes or other events expressly approved by the national council of social security in health, the members of the general system of social security in health shall be entitled to the coverage of the medical-surgical services, compensation for permanent disability and death, funeral expenses and transportation expenses to the health care centre. The solidarity and guarantee fund shall pay directly to the institution that has provided the service at the rates established by the National Government in accordance with the criteria of the national council of social security in health.*

PARAGRAPH. 1°-In cases of traffic accidents, the coverage of medical-surgical services and other benefits will continue to be the responsibility of the insurance companies authorised to administer the resources of the compulsory traffic accident insurance with the modifications of this law.

PARAGRAPH 2-The other risks foreseen herein shall be covered by the sub-account of the solidarity and guarantee fund, in accordance with the regulations established by the National Government.

PARAGRAPH. 3°-The National Government shall regulate the procedures for the collection and payment of these services.

PARAGRAPH. 4°-The general system of social security in health may establish a system of reinsurance for the coverage of catastrophic risks. ”

²⁷¹Article 1, Decree 56 of 2015.

²⁸¹"Whereby measures of attention, assistance and comprehensive reparation to the victims of the internal armed conflict are dictated and other provisions are issued".

²⁹¹"Whereby Law 1448 of 2011 is regulated and other provisions are issued".

³⁰¹See table contained in Article 14 of Decree 56 of 2015.

³¹¹Article 19, Decree 56 of 2015.

³²¹According to the definition contained in Article 3.8. of Decree 56 of 2015, a victim is: "any person who has suffered damage to his or her health as a result of a traffic accident, a catastrophic event of natural origin, a terrorist event or another approved event".

³³¹According to the definition contained in Article 3.4 of Decree 56 of 2015, terrorist events are considered to be: "those provoked with bombs or other explosive devices, those caused by terrorist attacks on municipalities, as well as terrorist massacres that cause death or damage to the personal integrity of civilians".

³⁴¹Article 15, Decree 56 of 2015.

³⁵¹Article 111 of Decree Law 19 of 2012.

³⁶¹Article 73 of Law 1753 of 2015 (National Development Plan).

³⁷¹In the case of natural persons, this begins with the preparation of supporting documentation for the claim and ends with the receipt, by the Fosyga or whoever takes its place, of the fully completed form that, for this purpose, is adopted by the ministry through the Social Protection Funds Administration (art. 10).

³⁸¹It starts with the receipt of the physical supports of the claims that have passed the pre-radiation stage and ends with the uploading of the information of each claim to the Fosyga information system or, failing that, with the rejection report and the return of the physical supports received to the claimants (art. 13).

³⁹¹It starts with the uploading of the claims information to the Fosyga information system and concludes with the certification of the closure of the package in the Fosyga information system (art. 16).

⁴⁰¹It starts with the certification of the claims package in the Fosyga information system and culminates with the custody or return of claims with final status (art. 20).

⁴¹¹It begins with the certification of the closure of the package in the Fosyga information system and ends with the transfer to the beneficiary of the amounts approved in the aforementioned package or with the extinction of the right to receive said payment, as appropriate (art. 26).

[⁴²¹"B. Minimum verification issues for permanent disability claims:

1. That the form adopted for this purpose by this Ministry through the Directorate for the Administration of Social Protection Funds is completely and correctly filled out in accordance with the corresponding instructions.
2. That the ECAT sub-account of FOSYGA is competent to recognise and pay the claim submitted.
3. That the claim is submitted within the term established in Article 73 of Law 1753 of 2015 or the applicable regulation.
4. That the items claimed have not been recognised or paid by the FOSYGA or by another entity, under the terms of Decree 056 of 2015 or the rule that modifies or replaces it.
5. That the claimant's permanent loss of work capacity is directly related to the event.
6. The information submitted by the complainant is consistent.
7. That the status of victim is accredited in accordance with the provisions of Decree 056 of 2015 or the rule that amends or replaces it and this resolution.
8. That the qualification of the loss of working capacity has been generated within the maximum term established in article 15 of Decree 056 of 2015 or the regulation that modifies or replaces it".

⁴³¹Article 66.

⁴⁴¹Decree 1429 of 1 September 2016 provided that any regulatory reference to Fosyga or its sub-accounts should be understood as being addressed to ADRES (art. 31).

^{45]}National Institute of Health, National Health Observatory, Consecuencias del Conflicto Armado en Salud en Colombia; Ninth Technical Report (p. 209). Bogotá, D.C., 2017. Available at: <https://www.ins.gov.co/Direcciones/ONS/Informes/9%20Consecuencias%20del%20Conflicto%20Armado%20en%20la%20Salud%20en%20Colombia.pdf>

^{46]} According to information reported by the Directorate for Comprehensive Action against Antipersonnel Mines, as of 30 June 2018, "there have been 11,601 victims of antipersonnel mines and unexploded ordnance, with 2006 being the most critical year, with 1,232 victims, the highest number in the history of Colombia. In the last decade, the trend has been falling, with the exception of 2012, and in 2016 it reached levels not seen since 1999. So far in 2018, there have been 73 victims. **This problem has injured 80% (9315) of the victims and 2286 people have died as a result of the accident, i.e. 1 out of every 5 victims dies. On the other hand, Colombia has been one of the countries in the world with the highest number of victims of the security forces and this has meant that of the total number of victims, 61% have been members of the security forces and the remaining 39% correspond to civilians**".

^{47]} See, among others, judgments C-609 of 2012, T-702 of 2012, C-715 of 2012, SU-254 of 2013, C-767 of 2016, T-305 of 2016 and T-083 of 2017.

^{48]} Sentence C-767 of 2014.

^{49]} Among the most relevant international instruments that recognise victims' rights to truth, justice and reparation are: the Universal Declaration of Human Rights (art. 8); the American Declaration of Human Rights (art. 23); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (arts. 8 and 11); Protocol II Additional to the Geneva Conventions (art. 17); the American Convention on Human Rights; the Cartagena Declaration on Refugees, among others.

^{50]} Sentence C-609 of 2012.

^{51]} Auto 173 of 2014.

^{52]} Sentence C-781 of 2012.

^{53]} Judgment T-188 of 2007, reiterated, among others, in Judgments T-702 of 2012, C-781 of 2012.

^{54]} 12 March 2017 was a public holiday and therefore the term was extended to the next working day.

^{55]} Document visible at folios 22 to 27 of the main file.

^{56]} Document visible at folio 89 of the main file.

^{57]} See, among others, judgments C-781 of 2012 and T-732 of 2013.

^{58]} Constitution, Article 228.