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MECHANISMS FOR REPARATION OF DAMAGES CAUSED BY LEGAL TRANSACTIONS OF ALIENATION OF REAL ESTATE IN CONTEXTS OF GENERALIZED VIOLENCE

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ABSTRACT

The generalized violence of the armed conflict in Colombia has generated that a large part of the displaced population has entered into legal transactions such as the purchase and sale of real estate under unfavorable conditions that generate certain disadvantages for them, being a common situation in Colombia and other countries that share similar contexts. It becomes necessary then to analyze how the figures such as land restitution of the law 1448 of 2011, the rescissory action for enormous injury and the nullity for defects of consent in legal transactions involving the alienation of real estate, are applied in order to make a diagnosis of the applicability of this factual assumption in the population displaced by the armed conflict in Colombia. This article analyzes the mechanisms of Colombian civil law to challenge this particular type of legal transactions in light of the rights of the displaced population, in order to establish a framework for the application of these protection mechanisms in Colombia.

KEY WORDS

Armed conflict, legal business, enormous damage, land restitution, vices of consent.

Summary: I. Introduction. II. The displaced victim of the conflict as a subject of special protection and the issuance of Law 1448 of 2011. III. The restitution of lands of Law 1448 of 2011 and the mechanisms applicable to legal transactions concluded during the armed conflict. IV. Application of land restitution of Law 1448 of 2011. V. Rescissory action of the huge lesion. VI. The nullity of the legal transaction due to defective consent. VII. Conclusions. Bibliography.

I. INTRODUCTION

Forced displacement is one of the most common behaviors in the context of armed conflict, its victims (Displaced) are put in a defenseless condition when they move to a different place, either because they were forced to leave their home or because of the threat it meant for their lives and the quality of this, the environment where they resided. This being the biggest difference between displaced and migrant, because while the latter moves for reasons other than the conflict, the displacement of the former is due to it (United Nations High Commissioner for Refugees [UNHCR], 2021), and it is because of this same context that the victim

tends to make decisions that can greatly affect him, For example, conducting legal transactions that do not pursue your interests and do not benefit you.

Before 2019, Colombian jurisprudence had opened the possibility of applying the figure of defects of consent in contracts made during the armed conflict in Colombia provided that, *i.* the facts that came from acts of violence derived from the context of the armed conflict in Colombia; *ii.* That the alleged force had sufficient intensity in the victim to determine the performance of the act in dispute; *iii.* That the legal business arises from taking advantage of the conditions of generalized violence, taking advantage of the context to obtain advantages for one of the parties correlative with the patrimonial detriment of the victim (the other party) by reason of the contract concluded; *iv.* That there was a causal link between the acts of generalized violence and the consent to enter into the legal transaction, in other words, the victim contracted by the coercion or fear that put pressure on his will; and *v.* that there was a visible and objectively measurable calculable advantage in the legal transaction concluded (Supreme Court of Justice, SC-15- 04 –1969).

However, on May 15, 2019, the Supreme Court of Justice of Colombia in the Civil Cassation Chamber pronounced sentence SC-16812019 (85230318900120080000901) where it takes a completely different path by considering that although force can come from any person or subject, it must have its *raison d'être* in obtaining consent, that is, to provoke the legal act as such. Under this interpretation, it is not possible to apply force as a mechanism of legal protection when the violence has not been intended to impose the legal business that is sought to be contested. Based on the Causal Nexus, that is, “the necessary factual connection that must exist between human action and the result produced” (Sessarego, 2003 p. 122) in this case between vice and consent; The Court establishes as a requirement that the victim has to argue that the generalized violence of the Colombian internal armed conflict caused an alteration in the creation of consent, and that specifically this led him to hire. In other words, it is necessary to demonstrate an Occasional Nexus (Indirect Factual Relationship) as a presupposition to vitiate a legal transaction concluded in the context of the armed conflict (Supreme Court of Justice, SC-16812019 of 2019).

In this way, judgment SC-16812019 (85230318900120080000901) of May 15, 2019, creates a precedent never before seen in the Supreme Court of Justice of Colombia Civil Chamber, because, while previously it was viable to demand the relative nullity of a contract of sale of real estate using the argument that the force inherent in the violence of the armed conflict prevented the formation of full consent, as stated in Article 1513 of the Colombian Civil Code; The cassation ruling leaves unfounded future claims that base their claims on this same reasoning, limiting the application of the figure of force as a defect of consent to specific cases, thus causing displaced persons, who have entered into a legal transaction moved by the violation or threat of their life, their physical integrity, security or freedom (Law 387, 1997); They cannot use this mechanism of civil jurisdiction to annul such legal acts and have to resort to others.

In this order of ideas, taking into account that currently Colombian civil legislation consists of various legal institutions to dispute these legal businesses where a benefit is generated to one agent against the impoverishment of another such as the rescissory action enormous injury, and a norm aimed at creating forms of integral reparation to the victims of the internal armed conflict, thus establishing the mechanism of Land Restitution (Law 1448 of 2011). It becomes essential to analyze whether these civil figures present in the current legislation to compensate for the damages brought by the conclusion of legal transactions such as the sale of real estate, due to the armed conflict in Colombia, contradict the type of legal acts that the interpretation given by the Supreme Court of Justice to article 1513 of the Colombian Civil Code does not address, that is, the conduct of taking advantage of circumstances typical of generalized violence to obtain substantial unjustified gains by one of the contracting parties through the alienation of property in the context of the armed conflict.

In this way, it is essential to analyze this situation taking into account that it compromises guarantees and rights that are protected from the international and national legal system, as is the case of Law 387 of 1997, when in its article 2 it stipulates that “the displaced and/or forcibly displaced have the right not to be discriminated against because of their social status as displaced persons, on grounds of race, religion, public opinion, place of origin or physical disability”. All this, together with the principle of responsibility that the State has to safeguard and promote conditions that ensure equity and justice among Colombians, a provision

that demonstrates how important the displaced population is for Colombian legislation because it is considered a clear subject of protection. It then becomes pertinent to analyze the procedural means these subjects have to compensate for the damages brought to them by the conclusion of legal transactions such as the sale of movable property, due to the armed conflict in Colombia; Because if the mechanisms established by the legislation are not viable, in this case we would be facing a violation of the rights of this population because we are facing a legislative omission on the subject.

This article will analyze the application of Colombian procedural mechanisms to compensate for damages arising from the sale of real estate held due to the generalized violence of the armed conflict. Through a qualitative methodology of documentary analysis based on the following axes: *i.* The embroidery of academic and doctrinal discussions on the displacement of victims of the armed conflict, its protection framework at the national and international level and the consequent issuance of the Land Restitution Law 387 of 1997; *iii.* The explicit comparison between the figure of land restitution created by Law 1448 of 2011 and civil actions for reparation of damages generated by the celebration of legal transactions such as sales of real estate due to the armed conflict (enormous injury and defects of consent).

II. THE DISPLACED VICTIM OF THE CONFLICT AS A SUBJECT OF SPECIAL PROTECTION AND THE ISSUANCE OF LAW 1448 OF 2011

According to Castrillón; et al, 2018, displacement is defined as those acts of operation that prevent vulnerable sectors from establishing themselves in their place of native and cultural origin as a settlement, creating as a consequence, that they are located in random sectors where it is not possible to create adequate environments to live. It generally occurs when social groups with greater economic capital and political power, acquire power to accentuate themselves in these territories, creating an impossibility of access to housing in that sector, in turn, unaffordable economic contexts where mostly the internal armed conflict creates hostile environments, being its inhabitants expelled without the capacity to prevent or combat such expulsion.

This relationship of political and economic powers creates a type of normalization in the face of the phenomenon, a relationship that should not be considered, including the capacity for transformation and creation of new problems at the social level and economic imbalance, from the erroneous interpretation, of the need to give new forms of adaptation of these displaced populations, although their cultural and spiritual concept are not possible to install within the general characters that predominate at the social and cultural. (Obeso, & González, 2018). In this sense, it must be taken into account that these populations are minorities with a distinctive interpretation of the world, therefore, the common sense of adaptation would not apply and would be the creation of new problems at the social level, from the armed conflict to the intensification of the current humanitarian crisis.

That is, the prevention and protection of population groups that have been forced to move by different social, economic, and political factors, do not they only face consequences at the economic level, but the loss of identity, social ties and land, taken in a general way; Specifically, individual consequences are observed from gender, such as victims of social uprooting, rape, murder of the spouse, and restart of the life project, this being assumed from a different social context, contemplating there the impact of the adaptation and reinterpretation of different social conditions that do not include defined spiritual characters. (Obeso, & González, 2018).

In other words, the consequences of displacement are interpreted as those that involve much more than an expulsion from the territory, lifestyles, forms of behavior and social adaptation are examined, emphasizing social behaviors, glimpsing the definitions of what is socially acceptable and what is not acceptable by the middle class, where stigmatizations and types of approval are governed, where isolation is reflected, or inclusion of individuals within social groups, that is, displaced population groups must face, not only the adaptation to new means of subsistence, but also the social rejection that exists outside their territory, thus having to understand the material and symbolic appropriation, to generate acceptable social behaviors, being this moldable dependent on the sector, neighborhood or community where they are accentuated.

Santero, & Machado, 2021, state that politically it is observed according to the supreme court justifies, (judgment Supreme Court of Justice, rad. 39290, 2016), the search for the protection of rights within the national and international framework of the displaced population; Within the international framework, the Universal Declaration of Human Rights establishes the prohibition of displacement in an interpretative way, since it threatens humanity, this from the execution of acts of cruelty that degrade from an individual to a population group, contemplating torture, emotional and physical. Article 5 (Universal Declaration of Human Rights, 1948). Likewise, within resolution number 50 of the IACHR (International Commission on Human Rights), these principles are defined for international guidance, for the understanding of efficiency, in terms of the creation of effective public protection policies, which provide support and assistance to the displaced population.

In this way, since article 2 of Law 387, 1997, principles at the national level from the Colombian penal code, which guide the application of measures of promotion, prevention and detention, in the face of the phenomenon of forced displacement, creating a direct observation to consolidate the economic, social and cultural activity of these populations at the internal level. Typified in two ways since Law 599 of 2000, armed conflict, considered a crime, contemplated by international humanitarian law, where the individual and his material property are constantly attacked through threats, intimidation and harm to the person. Set out in articles 49 and 17 agreed of Geneva 1949. Therefore, the crime of personal autonomy is also glimpsed, where the will to change housing is omitted, including the obligation not to be able to move to another place. Articles 1802 and 181 of the Criminal Code.

In this way it is clear that in order to address the rights involved in the condition of displaced by violence, the notion of armed conflicts must be addressed, which can be classified as internal, external, between organized groups and between organized groups and the State. Being the common denominator of these is the use of force or violence, in such a way that its intensity threatens in some cases in a prolonged manner against the physical, psychological and even patrimonial integrity of civilians, and that regardless of their origins of the (political, ethnic, religious and even financial, they are triggering different results such as numerous deaths, injured and even displacement (CIDOB, 2014).

Throughout the history of Colombia and some Latin American countries, one can find a plurality of origins and causes of the armed conflict, circumstances such as inequality, lack of spaces for citizen participation, drug trafficking, narcoterrorism, revolutionary struggles of a political nature, among others; they have played an important role in the context of violence that has characterized the country; but we must also bear in mind that different aspects such as geography and political organization itself do not allow countries like Colombia to establish a central government that is strong and otherwise a government is generated that is characterized because it unprotects the peripheries and consequently is prone to commotion (Inkster & Comolli, 2013). All these factors have created a fracture within the Colombian territory, so much so that they have marked different social and political dynamics that are characterized by the use of violence and the struggle for power.

In response to this problem, on June 10, 2011, the Congress of the Republic issued Law 1448 to regulate a series of administrative, social, economic and judicial measures for the benefit of victims of human rights violations and guarantees of international humanitarian law during the Colombian internal armed conflict (Law 1448, 2011). The law aims to vindicate the dignity of those affected by the armed conflict so that they can access truth, justice and reparation with a guarantee of non-repetition, thus materializing the responsibility of the State attributed by article 13 of the Political Constitution of Colombia.

Land restitution then becomes a mechanism to ensure fair reparation for victims of displacement due to the armed conflict in Colombia, a mechanism that, when complemented with other compensation measures that go beyond the patrimonial sphere, manages to dignify in part this population that was forced to leave their place of habitation due to the danger posed by the context of generalized violence that meant for their lives (Díaz & Zamora, 2010). In this sense, it is in chapter III of title IV (Reparation of victims) of the regulations *ibid.* where it establishes what are the actions of restitution of lands and what is the process that the victims must carry out to achieve a patrimonial reparation, being then the restitution “the realization of measures for the restoration of the previous situation” (Law 1448, 2011).

The land restitution of Law 1448 of 2011 and the mechanisms applicable to legal transactions concluded during the armed conflict Taking into account that Law 1448 of 2011 establishes the restitution of lands illegally alienated in the context of the armed conflict in Colombia, it is pertinent to analyze how it works and what its procedural budgets are in comparison with other mechanisms established by the Colombian civil system. In this section, a direct comparison will be made between the figure of land restitution created by Law 1448 of 2011, the rescissory action of enormous injury and the relative nullity due to defect of consent of force majeure as procedural mechanisms that seek to compensate or repair the damages produced by the celebration of legal transactions such as the sale of real estate motivated by the context of generalized violence of the armed conflict.

IV. APPLICATION OF LAND RESTITUTION OF LAW 1448 OF 2011

The first presupposition that must be observed for the application of this mechanism is the condition presented by the victim, who can be considered Displaced or Dispossessed, a consideration that ends up defining the legal consequences that are applied to him. On the one hand, to be Displaced it is required that *i.* The forced abandonment of the place of residence or of daily economic activities within the national territory, *ii.* That the abandonment originates because the life, physical integrity, security or freedom of the subject are violated or threatened directly, and that *iii.* It involves a context of internal armed conflict, internal conflicts, generalized violence, massive violations of human rights or international humanitarian law or circumstances that significantly affect public order (article 1 of Law 387 of 1997). On the other hand, the condition of Stripped subject (or who forcibly abandoned), although it is closely related to displacement, to such an extent both figures can coexist in the same victim; is a person who suffered from one or a series of actions that caused the sale, alienation or eviction of the land they inhabited as legitimate owners, possessors or occupants of real estate; this regardless of whether the dispossession is justified in a legal transaction, an administrative act, a sentence or a crime (Article 74, Law 1448 of 2011).

Law 1448 provides for two actions of reparation for the dispossessed, being the legal and material restitution of the dispossessed property the first alternative

and the second the restitution by equivalent or the recognition of compensation as subsidiary. The legitimation by active in this (the ownership of the right of restitution), falls on those who were possessors, operators of vacant lands that were intended to be acquired by adjudication or the owners of the goods; specifically this last relationship with the Real Estate is the one that best adapts to the situation of legal business such as the sale of real estate.

The restitution process then begins with the registration of the immovable property in the Registry of Confiscated and Forcibly Abandoned Land to locate the property next to the person and the family nucleus of the dispossessed, a request that is made ex officio or at the request of the interested party. After registration according to article 76 of Law 1448:

The Special Administrative Unit for the Management of the Restitution of Dispossessed Lands shall inform the owner, possessor or occupier who is on the property subject to registration of said procedure, so that he can provide documentary evidence proving the ownership, possession or occupation of said property in good faith, in accordance with the law. This Unit has a term of sixty days, counted from the moment in which it undertakes the study in accordance with the second paragraph of this article, to decide on its inclusion in the Register. This term may be extended for up to thirty (30) days, when there are or arise circumstances that justify it.

The registration of a property in the registry of dispossessed lands shall be a procedural requirement to initiate the restitution action referred to in this Chapter.

It is important to emphasize the presumptions created by the regulations analyzed, on the one hand, all businesses and contracts between the victim or his relatives and subjects convicted for their relations with armed groups outside the law, drug trafficking or crimes of the same nature; that transfer or promise the transfer of any real right (including the domain) are presumed to lack consent, that is, non-existent and consequently the derived legal acts (Presumption that does not apply to the case of fact observed). On the other hand, it is presumed unless proven otherwise, that there is an absence of consent or cause licited in legal transactions or contracts that transfer or promise the transfer of any real right (including ownership) over a real estate and are declared non-existent and consequently the derived legal acts when:

- I. Its celebration will border on “generalized acts of violence, phenomena of collective forced displacement, or serious violations of human rights.
- II. at the time when the threats or acts of violence that are alleged to have caused the dispossession or abandonment occurred” (Law 1448 of 2011).
The property subject to restitution will adjoin real estate where “the acts of violence or dispossession have been committed, there has been a phenomenon of concentration of land ownership in one or more persons, directly or indirectly; on neighboring properties of those where there had been significant alterations in land uses such as the replacement of consumer and sustaining agriculture by monocultures, extensive livestock or industrial mining, after the time when the threats, acts of violence or dispossession occurred” (Law 1448 of 2011).
- III. Concluded directly or through third parties with persons extradited for drug trafficking or crimes of the same nature.
- IV. “In cases in which the value formally enshrined in the contract, or the value actually paid, are less than fifty percent of the real value of the rights whose ownership is transferred at the time of the transaction” (Law 1448 of 2011).

It is important to clarify that, according to articles 77 and 78 *ibid.*, when the person interested in restitution manages to prove his right in rem over the immovable property (ownership, possession or occupation) and the subsequent dispossession, the restitution of the immovable property may not be denied even by an administrative act or judgment with transit to *res judicata* contrary to the interests of the victim. In another sense, the only thing the victim has to prove is his real right, his condition of displaced person to prove his legitimacy in the claims; being the defendant who has to contest.

Regarding the legal consequence of the process, article 91 *Ibid.* explores different aspects that must be addressed by the ruling that terminates the ruling that terminates the land restitution process, the relevant consequences for the alleged fact raised being that the Registration of the judgment in the registry office of public instruments is given, the Cancellation of registration records on the property subject to litigation. the Order of restitution to the favored possessor, orders of *des englobe* or *parcelle*, and encompassing, depending on the case, compensation of third parties in relation to the improvements on the object of restitution, the nullity of previous judicial decisions, the nullity of previous administrative acts, the cancellation of real rights of third parties over the property in question, and the order of accompaniment of the public force for

the restitution of the property.

In this vein, when there is no causal link between the generalized violence, and there is a considerable disadvantage caused by the contract and consequently reciprocal gains towards the contractor who took advantage of the circumstances of defenselessness of the victim; whether it is an adequate and enforceable situation in the land restitution process. The presumptions of this mechanism allow that if the victim is in the register of displaced persons, the property subject to dispute in the Registry of dispossessed and forcibly abandoned lands and the real rights he had over the real property, legal transactions are considered null and void. In this way the procedure suggested by Law 1448 of 2011, by establishing generalities for the victims of the conflict who in their condition of displaced and dispossessed. It is feasible to obtain the restitution of immovable property that was disposed of because of the armed conflict.

V. RESCISSORY ACTION OF THE ENORMOUS LESION

On the other hand, on the enormous injury, from the Code of Justinian, the so-called *lex secunda* was introduced, as an action aimed at compensating the legal business of sale when the good object of the contract had been sold for less than half of the fair value (Tamayo, 2008) being today in essence what is known as the rescissory action product of the enormous injury. Although the doctrinal discussion on this figure has conceived different ways of interpreting it (objective and subjective sense), the enormous injury in Colombian legislation does not cease to be a fracture in the contractual perfection of the sale of a real estate due to the arithmetic disproportion of the services agreed by the contracting parties, specifically between the agreed price and the fair price (Civil Code, Art. 1947). In this way the figure is constituted as a sanction for both the seller and the buyer that obeys the equity between the purchased good and what is paid for it.

On the other hand, it must be taken into account that there must be a patrimonial affectation in one of the agents that celebrates the contract, that the object of dispute is a real estate and businesses that may involve them (inheritance assignment, sale and partition of goods); As fundamental requirements for the existence of the enormous injury, this is because Colombian civil legislation only takes into account

the economic imbalance and not the subjective conditions in which consent was given, like other legislations in which.

The notion of fraud as a vice is immersed. In this way, in the event that this injury exists, it becomes a cause of relative nullity or the respective readjustment to the initial conditions of the legal business and the consequent termination of the contract (Acción Rescisoria) (Stiglitz & Bernal, 2021).

Specifically in the event of fact where a displaced person of the armed conflict alienates a real estate of his patrimony with the conclusion of a contract of sale by reason of the generalized force and not exercised by the other contracting agent, the enormous injury and its consequent Rescission of the Sale for the enormous injury, proceeds as long as the sale affects the balance between the benefits (Price and the Fair value of the good). That is, provided that the value of the real estate sold or exchanged by the victim of the conflict is less than half of the fair price of the latter (Civil Code, Art. 1947) and that the victim has not waived the rescissory action for the enormous injury; This figure of civil law is adapted to the factual assumption raised. Bearing in mind that the enormous injury is not considered as a defect of consent and therefore does not produce nullity in the contract, the consequence with respect to the factual assumption analyzed in this article would be the termination of the contract (Return to the initial situations of conclusion of the contract) or the cancellation of the missing surplus with a deduction of one tenth in case the buyer wanted to avoid the rescission (Code Civil, Art. 1948).

In this sense, it must be taken into account to establish whether this figure is viable is that this rescissory action has to be established within 4 years after the conclusion of the contract (Civil Code, Art. 1954). This is because the phenomenon of expiration can compromise the effectiveness of the action. The victim would have to institute the action within the following 4 years for it to be effective, therefore in cases where this period of time had passed, it could not be carried out; On the other hand, the property disposed of by the contracting displaced person would have to be sold for less than half of its fair value, so that in cases where this requirement is not met, enormous injury could not be alleged.

VI. LA NULIDAD DEL NEGOCIO JURÍDICO POR VICIO DEL CONSENTIMIENTO

Now, if we talk about the requirements to perfect the consent and that it is suitable for a legal business, it could be said that there are two: *i.* that it comes from a plurilateral deliberation and *ii.* That it is free of vices. The first requirement, as stated above, is the essential characteristic of consent and what differentiates it from will; the reflection of the business (deliberation), which is nothing more than the clear, consistent and real external expression about the act to be performed (Garcés, 2014). On the second requirement, this is regulated from articles 1508 to 1517 of the Colombian civil code, which specifies that the defects of consent are: error, fraud and force, being its direct consequence in case of existence of any the non-validity of the act.

The error is considered as a notable disagreement between the intention of the contracting party and the result agreed in the agreement of wills (reflection of the business), being a common error, when there is a divergence between what is written and the true intention of the agents; error of law, when the legal effects displayed by the business differ from those which, the agent in his ignorance of the law thought would unfold; and error of fact, when a factual situation referring to the agreement is misunderstood (Nature of the business, Quality of the object, Obligated persons) (Castro et al., 2016). It should be emphasized that according to article 1509 *ibid.*, the error of law does not suggest the nullity of the business by the legal assumption that everyone knows the law.

On the other hand, fraud is the behavior of an agent who seeks the deception of the other. Like the error in fraud there is a discrepancy between the intention of an agent and the result of the business, however, this mistake does not occur in the psychic process of the person, but is caused by maneuvers of the other agent who falsifies reality to his benefit. The deception is when the deception has effects that destroy the legal bond and the incidental fraud is when there is deception and error, but this does not have enough impact to destroy the link and therefore only generates compensation (Castro et al., 2016).

With regard to force (the one that best suits the context of generalized violence), according to article 1513 *ibid.*, it is a coercion that generates such fear in the agent

Contracting party who does not allow his consent to be full, being the impression he generates in the subject by the force consecrated in any act against the infringed or against “his consort or any of his ascendants or descendants”, which leads him to bind himself. However, the requirements for this force to vitiate consent is that *i*: has the ability to generate impact on the subject, an impact that varies depending on the person and their conditions such as age, sex, socioeconomic, intellectual level, experience, and those of each one; or *ii*. That the act is capable of instilling an objectively justified fear.

For its part, in the face of force, the civil code does not put any other requirement, in fact, it does not speak of its origin, as if it does in the fraud when in article 1515 it says that this “... it does not vitiate consent except when it is the work of one of the parties...” And it puts the causal link between vice and business, which does not happen in force. Additionally, in addition to the interpretation of article 1513, Law 201 of 1959 speaks of an exceptional situation in which a context in which force and violence prevail, such as the State of internal commotion, the business concluded is considered an advantage that causes nullity by force as a defect of consent; which allows us to visualize that although in a specific situation, in the case of Law 201 of 1959, or in a general interpretation of article 1513; The relationship between the origin of the force and what is contracted is not required, and on the contrary it seeks to punish its use in the celebration of legal business.

In this sense, in order to annul a legal transaction such as a contract for the sale of real estate concluded by a contracting party victim of the armed conflict in Colombia on the grounds of force, it is required, in addition to the requirements established in article 1513 of the civil code, that the interested party of nullity with the body of evidence demonstrates that the violence has a causal link with the legal act concluded under those conditions. All this is because the armed groups in Colombia generally in their mode of operation do not seek the improvement of sales of the places from which they appropriate and harass, the conclusion of contracts is not necessary because with only armed seizure they can take over the properties (Supreme Court of Justice, SC-16812019 of 2019).

The causal link added by the Supreme Court of Justice in this precedent does not complement the treatment that had been given to it, but on the contrary changes substantially the way in which this issue had been handled, the direct consequences of this ruling are *i. the impossibility of annulling legal transactions arguing force as a defect of consent* and *ii. the lack of protection of the victims of the conflict against conduct that falls outside the legal concept of nullity due to defects of consent*. In other words, a contracting party can take advantage of the circumstances of the Colombian internal armed conflict and the need and manifest weakness of its victims, to obtain advantages and gains that objectively could not be acquired in a normal context.

VII. CONCLUSIONS

Law 1448 of 2011 establishes a guarantee mechanism for the victims of the conflict and the displaced, through which the real rights of the property alienated by reason of the armed conflict can be recovered, thus causing the nullity of the previous legal transactions, and returning to the initial state in which the displaced person was before he was affected by the specific situation of violence.

It is possible to compensate the patrimonial detriment of a sale of real estate carried out in the framework of the armed conflict by means of the enormous injury, but its viability will depend on the arithmetic disproportion (less than half) between the agreed price and its fair value, and the timely establishment of the rescissory action within four years after the conclusion of the contract.

According to judgment SC-16812019 of 2019 of the Supreme Court of Justice, when you want to dispute a legal transaction such as a contract for the sale of real estate entered into by a contracting party victim of the armed conflict in Colombia, arguing force, it is required that it demonstrate that the violence of the context has a causal link with the legal act concluded under those conditions, thus changing the way in which this issue had been interpreted in this corporation, making it unfeasible to annul this type of legal business arguing force as a vice of consent.

The restitution of land is the most viable alternative to achieve protection in this factual case, since it does not require the victim of the conflict to be a causal link, but, on the

contrary, in the face of the visible disadvantage of the business concluded, it is presumed with the proof of the previous real right and the existence of the armed conflict.

the right. The process being a way to re-establish the property rights of the good and a viable alternative. Despite the fact that the new interpretation of force as a defect of consent in legal transactions such as the sale of real estate in the context of the armed conflict in Colombia, does not allow the population that has the status of displaced person to allege this figure when the agent with whom it was contracted was not the one who exercised force, rather, it took advantage of the context of generalized violence to celebrate that act.

BIBLIOGRAPHY

- United Nations High Commissioner for Refugees. (2021, May 7). *Refugee or migrant: know the difference between the two terms*. UNHCR-UNHCR. <https://fundacionacnur.org/novedades/noticias/refugee-or-migrant-knows-the-difference-between-the-two-terms/>
- Castrillón-Guerrero, L., Riveros Fiallo, V., Knudsen, M. L., López López, W., Correa-Chica, A., & Castañeda Polanco, J. G. (2018). Understandings of forgiveness, reconciliation and justice in victims of forced displacement in Colombia. *Journal of Social Studies*, (63), 84-98.
- Civil Code [Code]. (2019) 8th ed. Legis
- Congress of Colombia. (June 10, 2011). By which measures of attention, assistance and comprehensive reparation are dictated to the victims of the internal armed conflict and other provisions are dictated. [Law 1448 of 2011]. DO: 48.096
- Congress of Colombia. (18, July and 1997). By which measures are adopted for the prevention of forced displacement; the care, protection, consolidation and socio-economic stabilization of those internally displaced by violence in the Republic of Colombia. [Law 387 of 1997]. OJ: 43.091
- Supreme Court of Justice. (2019) Filing. 085230-31-89-001-2008-00009°OI [MP. < Luis Alonso Rico Puerta >]

- Cortés-Agray, M. C. (2018). The function of punishment in Colombia under Law 599 of 2000. de Gestión Territorial, S. (1997).
- Díaz,C.&Zamora,A.(2010). Lessons for reparations to victims of forced displacement in Colombia, from comparative experience. Bogotá: ICTJ.
- Inkster, N. & Comolli, V. (2013). Drugs, insecurity and failed states. The problems of prohibition. Uniandes Editions.
- Janoschka, M. & J. Sequera (2014): Gentrification and displacement processes in Latin America, a comparative perspective, in Metropolitan Challenges. A dialogue between Europe and Latin America, Juan José Michelini (ed.), pp. 82-104. Cataract. Madrid. ISBN: 978-84-8319-887-2
- Marin, M. Enormous injury in the commercial sale as a limit of the autonomy of the will. 2016, Universidad de los Andes. Faculty of Law. [Accessed: 29 Apr. 2021]. Available in <https://repositorio.uniandes.edu.co/bitstream/handle/1992/13697/u729012.pdf>
- Moreno, G. Extension of the enormous injury in the non-commercial sale of certain movable property. In: Revista Iter ad veritatem. [Online]. Vol. 12, No. 1 (July, 2014)
- Obeso, R. V., & González, A. G. (2018). Forced displacement: a rights issue from a gender perspective and peace agreements. *Political Reflection*, 20(40), 81-94.
- Paredes, A. Ineffectiveness of the legal act. In Castro, M. (Ed) Derecho de las obligaciones : con propuestas de modernización. (pp. 163- 233) Universidad de los Andes: Temis S.A.
- Penal, C., & COLOMBIANA, L. (1981). Colombian Penal Code. Bogota: Range.
- Santero González, J. L., & Machado Cuadro, C. A. (2021). Principles and criteria governing the design and execution of public policy on forced displacement in Colombia in light of the jurisprudence of the Constitutional Court.

Stiglitz, R. & Bernal, M. (2017). The huge injury in Argentina and Colombia: a comparative study. *Revista de Derecho Privado (Universidad Externado de Colombia. Department of Civil Law)*, 33(33), 137–159. <https://doi.org/10.18601/01234366.n33.06>

Tamayo A. *Manual of Obligations: The legal act or business and other sources of obligations*. 7 Ed. Bogotá D.C.: Doctrina y Ley, 2008. 261 p.