

Ruling T-025, 2004 on Displaced Persons

I. CASE

Ruling T-025, 2004

II. JURISDICTION

Third Review Chamber of the Colombian Constitutional Court

III. THEMATIC FOCUS

- Right to human dignity and housing
- Role of courts in determining state expenditures
- Culpability of State omissions

IV. NATURE & CONTEXT OF THE CASE

1. Procedural History

Approximately 108 tutela actions (claims of unconstitutionality) were filed with the Constitutional Court by 1150 family groups, all of whom belonged to the internally displaced population, with an average of 4 persons per family, and primarily composed of women, elderly persons and minors, as well as a number of indigenous persons. Plaintiffs claim to lack access to health care, resources to pursue an education, and lack of housing. Judges in lower courts denied granting these tutelas for a variety of reasons, some of which include that plaintiffs failed to follow proper procedures in filing and that “the tutela action was not created as a mechanism to alter the order of State institutions, in regards to the internal distribution of their jurisdiction and functions.” This appellate review court consolidated all of these previously denied actions.

2. Parties

Plaintiffs (described above) are persons who became victims of forced internal displacement due to events related to Colombia’s internal armed conflict that took place within two years of this action, versus numerous state municipal and departmental administrations.

3. Date

January 22, 2004

V. SUMMARY OF THE CASE

1. Background and summary of the facts

The intensification of the Colombian armed conflict generated a large population of forcedly displaced people, who were forced to leave their homes and migrate to urban centers with no source of subsistence. Forcibly displaced persons filed tutela actions charging state and local authorities with failing to protect their fundamental rights to human dignity and housing, among others. Some of the plaintiffs had applied for access to housing aid or starting capital or training for work projects, but received no response to their requests. Some received responses only after the tutela actions had been filed. Others were told that budgetary allocations were insufficient to fulfill their requests, and that their requests would be filled when resources became available, without specifying how long the wait would be. Some plaintiffs waited up to two years for a response to their requests.

2. Core issue(s)

Whether the following grievances constitute violations of plaintiffs' fundamental constitutional rights of petition, work, minimum subsistence income, dignified housing, healthcare, and access to education:

- Inadequate handling of plaintiffs' requests for aid by respondent authorities.
- Excessively long waiting time before receiving legally established aid.
- High number of tutela (claim of constitutional violation) actions filed by displaced persons to obtain aid, to the point that these claims are being treated as part of the ordinary procedure one must follow to obtain aid to which they are legally entitled.
- Lack of consistent policies across the country to provide aid and protection to displaced populations.

3. What was the decision? Holding & Outline of the Court's Decision

- Court held that, given the extreme vulnerability of the displaced population, as well as the repeated omission by the different authorities in charge of their assistance to grant timely and effective protection, the rights of the plaintiffs—and of the displaced population in general—to a dignified life, personal integrity, equality, petition, work, health, social security, education, minimum subsistence income and special protection for elderly persons, women providers and children, have all been violated (p. 10 #2.2).
- Rights violations have been taking place on a massive scale and are not attributable to a single authority, but are rather derived from structural problems that affect the State's entire assistance policy, **on account of the insufficiency of the resources allocated to finance such policy, and the precarious institutional capacity to implement it.** This situation gives rise to an officially-declared **unconstitutional state of affairs.** (p. 11 #2.2)
- State allocation of resources are not in accordance with the provisions of Law 387 of 1997, which established the constitutional rights of displaced persons. (p. 11 #2.2)
- Despite the existence of a State policy and social expenditures for assisting the marginalized population, the authorities in charge of the distribution of these resources

have repeatedly omitted to take the necessary corrective measures to effectively provide the level of protection to which the displaced population is legally entitled. (p. 11 #2.2)

- Court retained its jurisdiction to verify the compliance of state entities to its order.

4. Key Points

- Court attributes inadequate state response to i) “precariousness of institutional capacity to implement the policy,” and ii) “the insufficient appropriation of funds” (p. 30 #6.3)
- Court identifies discrepancy between stated policy and concrete implementation: “there exists an excessively broad gap between the issuance of legal provisions and the drafting of documents, on the one hand, and practical results, on the other” (p. 32 #6.3.1.2)
- Court defines State’s minimum duty to provide support for socio-economic stabilization displaced persons: State must identify specific circumstances of displaced person’s individual and family situation, his or her immediate place of origin, and the “alternatives of dignified subsistence available to him or her, with the aim of defining that person’s concrete possibilities of undertaking a reasonable project for individual economic stabilization, or participating in a productive manner in a collective project, for the purpose of generating income which may allow him or her, and any dependent displaced relatives, an autonomous livelihood” (p. 12)
- **Court ordered National Council for Comprehensive Assistance to the Population Displaced by Violence to “define the level of resources” which would “effectively fulfill the obligations of the state, regardless of the duty to protect, in a timely and efficient manner, the aforementioned minimum rights” within two months.** (p. 13 #2)
- Court also specified, “in case it is necessary to re-define priorities and modify any aspects of the State’s policy in order to comply with this mandate, said Council shall be granted a term of one year for that purpose” (p. 13#2)

5. What was the court’s reasoning in reaching its decisions?

- Answers to Court-created questionnaire on State programs and other documents indicated broad and generalized discontent by public and private organizations with State response, as well as by displaced communities themselves (p 29 #6.2.2)
- Court supports its conclusion that “public policies for assisting the displaced population have failed” by citing a study indicating that 92% of the displaced population has unsatisfied basic needs, 80% is in conditions of extreme poverty, 63.5% has inadequate housing, and 49% lacks access to public utilities. The study also shows that the displaced population only consumes 43% of the calorie levels recommended by the World Food Program and 23% of the displaced children under six years of age are below the minimum nutritional standards. Consequently, the displaced population disproportionately suffers inadequacies in the size/weight and weight/age ratios, deficits

in school attention, a predisposition to respiratory infections and diarrhea, eyesight reductions, and increases in child morbidity. Mortality rates for the general displaced population are six times higher than the national average. (United Nations, World Food Programme, “*Vulnerabilidad a la Inseguridad Alimentaria de la Población desplazada por la violencia en Colombia, informe de 2003*”) (p. 24)

6. What evidence did the court use to substantiate its decision on issues related to resources?

- Court points out that the execution of socio-economic stabilization programs depends on budget availability, even though State entities may receive aid by humanitarian organizations, both national and international. Goods and services in this component must be provided by several state authorities that are either part of the National Government or of the territorial entities. (p. 27 #6.1.3)
- Court affirms that legal provisions provide that **State entities may enter into arrangements with NGOs and that the State may request aid from international organizations to implement its policy for assisting the displaced population** (p. 27 #6.1.4)
- Studies by the Joint Technical Unit (group of technicians tasked with evaluating results of assistance policies for displaced people) indicate that levels of coverage of all aspects of the plan are insufficient and that State has fallen woefully short of its coverage goals, especially in projects for self-generated income and housing programs. Analysis from 1998-2002 showed that only 3.7% of potential demand for housing had been satisfied, and those housing units that were built fail to comply with minimum conditions of access to public utilities, location, and quality of materials. (p. 28 6.2.1)
- Court observed that the disbursement of the funds required to begin productive projects was delayed, and was “not made in accordance with the productive cycles of the businesses that actually manage to have access to credit aid” and that the provision of aid and services throughout the different stages of the process of assisting the displaced population is carried out in a discontinuous and delayed manner (p. 34 # 6.3.2.1(iii))

7. Relevant national/international norms in which the decision was based.

- On state obligations to protect displaced population:
 - Article 6, Law 387 of 1997.
 - Article 25, Decree 2569 of 2000
 - Article 25, Decree 2569 of 2000.
 - Paragraph 3, Number 1 of Article 1 of Decree 173 of 1998.
 - Article 17 of Law 387 of 1997.

8. Cited Case Law

- On the rights of the displaced population:

- Colombian Constitutional Court, Decision T-227 of 1997
- Colombian Constitutional Court, Decision T-1635 of 2000
- Colombian Constitutional Court, Decision T-268 of 2003
- Colombian Constitutional Court, Decision T-098 of 2002
- Colombian Constitutional Court, Decision T-790 of 2003
- Colombian Constitutional Court, Decision T-602 of 2003