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RESEARCH ARTICLE

CONSIDERATIONS ON THE GUARANTEES TO THE RIGHT TO EFFECTIVE PARTICIPATION OF VICTIMS FROM THE COLOMBIAN ARMED INTERNAL CONFLICT

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ABSTRACT

This article aims to present some specific considerations about the guarantee in terms of participation offered to victims of armed conflict in Colombia. This is understood as a right that must radiate all public policy of victims and restitution of land Contained in Law 1448 of 2011, its regulatory decree and the other rules that complement it. And from such irradiation to make visible the positive actions that account for the development, implementation and follow-up that is carried out, given that for these kalends the aforementioned law is about to fulfill six (6) years of having been sanctioned for a period Of ten (10) years.

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INTRODUCTION

This article aims to present some specific considerations about the guarantee that concerning to participation is offered to the victims from the armed conflict in Colombia, this understood as a right that should influence all public policy of victims and restitution of land contained in Law 1448 of 2011, its regulatory decree and the other rules that complement it; therefore, based on this influence, making visible the positive actions that give accounts of the development, implementation and follow-up that is carried out, given that, for nowadays, the aforementioned law is about to fulfill six (6) years of having been sanctioned for a period of ten (10) years. To talk about the right to participation of the victims from the armed conflict in Colombia, this time the Law 1448 of 2011 will be taken as reference, which is known as the Victims and Land Restitution Law. Initially to refer to those who are described as victims in its Article 3, on *victims*, "Are considered as victims, those people who, individually or collectively, have suffered damage for events occurred as from the first of January, 1985. as a result of violations of international humanitarian law or those of serious violations and manifested on the international human rights standards that occurred during the internal armed conflict". This rule also includes "participation of the victims" in Title VIII, Articles 192, 193, 194 and in its Regulatory Decree 4800 of 2011 in its Title IX, chapter I and its articles 261 to 268.

However, as it has been enshrined in the national legislation, rights must be granted and/or demanded, observing specific features such as: the differential approach that Article 13 of the Law contemplates which is initially established in a principle through which the different characteristics of the different population lines must be observed, both individually and collectively. These characteristics that undoubtedly suppose: different forms, scenarios and levels of participation, according to their needs, abilities, perspectives, socio-economic, cultural conditions, state of vulnerability and victimizing acts suffered, among others. Consequently, overcoming the various forms or stages of vulnerability embody rights, duties and obligations; both from the State as well as from the civil society, from businessmen, from the same victims themselves who claim to participate actively in the different processes that imply an integral reparation; all that, is what is mentioned in this law in its Article 14 as the Joint Participation. This vital right, which is dealt in this article, must be based on the principles of progressivity, gradualism and sustainability - comprised in articles 17 to 19 of the law in question - which intend to assume certain commitments, obligations and actions that are reflected in the increasing satisfaction of the most sensible needs of the target population: these in turn are linked to a temporality, spaces and of course financial resources, aspects without which it would not be possible to think about the execution of a public policy. The result of all this gear, will be what in the end institutionalism present when giving accounts of the Effective Enjoyment of Human Rights (GED GoceEfectivo de Derechos Humanos by its acronym in

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Spanish). Article 28 establishes twelve (12) rights of this population, in which it is reasonably inferred that participation is directly and indirectly involved in reparation; besides, the fifth right on this lists says: "The right to participate in the formulation, implementation and follow-up of the public policy of prevention, care and integral reparation" (Law 1448, 2011, article 28), regarding what can be said that if the victims in the national territory actively participated in the implementation and execution of this public policy, the results would undoubtedly be more encouraging, since they know the actual point of view, the felt needs, the real experiences of any population attending in addition to their particularities or what could best be identified as the differential approach when formulating, developing and implementing plans, programs and projects that undoubtedly lead to the fulfillment of the outlined objectives.

One of the most revealing tasks, regarding the participation that the public policy for the victims assigns to the National Government, is contained in the article 175 that deals with the design and objectives of the national care and reparation to victims plan, being specific when in the paragraph of this article it indicates that "the Government shall foster to include the victims in the process of designing and following up the plan of care and reparation for the victims" (Law 1448, 2011, article 175). It is just logical that when dealing with the inclusion of the victims in the processes of design and follow-up of the action plans so that they can be compensated, it means nothing less than that their voices should be heard and taken into account in the implementation of the public policy in question.

We understand, therefore, that in considering the participation of the victims an issue as basic as relevant in the matter of integral reparation, the title VIII about Victims' Participation was inserted in the Law 1448 of 2011, which in its article 192 imposes as a duty on the Colombian State, "to ensure the effective participation of the victims in the design, implementation, execution and follow-up to the fulfillment of the law, plans, projects and programs that are created on behalf of the same", also assigning the duty to use democratic constitutional and legal tools for that purpose, adapted to the extend to guarantee the right to participation of victims at all territorial levels. Towards this postulate it can be stated that, contrary to what the norm contemplates and that is therefore transcribed in this paragraph, what is actually evidenced is, that this participation has been understood by the institutionalism as the mere fact of being able to go to certain spaces, because victims are not prohibited to be there, even when the true participation is elevated to the category of *right* in the context of Law 1448, it considers the possibility of receiving information, intervening, presenting contributions or observations for the victims from the armed conflict in as spontaneous and active manner, to carry out inspections in the different construction processes in the already mentioned plans, programs, projects, etc., that are directed to this population self. It is clear that the sanction of Law 1448 of 2011, its regulatory decree 4800, June 10 of that same year and all those rules that complement it, on the one hand it provided certain hope for all those who had the quality of victims and on the other hand the Colombian State duty to comply with such provisions through the institutions, in order to guarantee to the target population that the rights violated in the framework of the internal armed conflict would be claimed. It was precisely in this sense that in Judgment T-025 of 2004, the State of

Unconstitutional Affairs (ECI by its acronym in Spanish)- (Constitutional Court, T-025 of 2004, 2004) was declared, after verifying after analysis one thousand one hundred and fifty (1,150) acts of petition and one hundred and eight (108) more files, the straightforward violation of fundamental rights of the victims from the internal armed conflict, of course, contemplates participation.

Having said that, the referred provisions in this document were regulated in Decrees 4633, 4634 and 4635, better known as ethnic decrees, as well as in Decree 4800 of 2011. As a result, some of the regulations referred to above will be directly or indirectly quoted and alluded to the right to participation, the mechanisms through which it must be exercised and the role played by the victims in the development of the public policy. Decree 4800 of 2011 regulates in effect, different aspects that without the observance of the guarantee to the victim's right to participation are innocuous; among them, Article 5 on the Transforming Approach, which, as its name indicates, it aims towards all those measures that intend to transform in the life of the affected, the remaining implications existing as a result of the different facts through which these people were made creditors to the title of victims. Article 7, related to the Social Dialogue and the Truth, which is also linked to the right to participation that victims have, understood as spaces for dialogue among themselves, the civil society and the state institutions at different territorial levels. As for Article 15, concerning the search for National Reconciliation, which states that it is not possible to understand a reconciliation process without the participation of the population directly affected by the armed conflict; consequently, it is considered that this article is closely related to the previous one in the present document, since reconciliation is unthinkable without listening to the voices of the victims, regarding their perpetrators, the state structure and the put into practice of the public policy, against their expectations or new projects of life.

It should also be said that Decree 4800 of 2011 describes *participation* in Article 261; in Article 262 it determines what is meant by effective participation and Article 263 speaks about the victims' spaces for participation. In addition, it should be mentioned that Law 1448 assigned in Title IX a chapter on the subject of effective participation of victims. With regard to these spaces of participation, it will be possible to relate several, among them: The effective participation of victims tables that operate in the municipal, departmental and national spheres - It is worth to say that these tables were not constituted nor operate in the total of the municipalities in the national territory, a space that is reserved for a limited number of victims, who act as representatives of this population. From the representatives before these tables emerge the ones who will represent the transitional justice committees and technical subcommittees. Now, although it is true that the people who are elected within the processes (That for this purpose have been regulated through the protocol of effective participation of victims) will be the representatives of the victims, it is also true that the law also enshrines participation for all those who are not present, do not belong to organized forms of victims, nor are they defenders of victims. For the practical case, the institutional structure highly disregards the right to participate actively when the individual is not a member of the victim panels; it is wrongly assumed that everything that involves this population should be summarized as a direct responsibility, of the table alone,

conveying to its members obligations that are considered of the as part of the National System of Attention and Integral Reparation to Victims (SNARIV by its acronym in Spanish), basically denying what is determined in Article 263 of the aforementioned law: *"The unorganized victims will have right to effective participation by making their observations, proposals and opinions known, [...] directly to the public entities in charge of implementing Law 1448 of 2011. Against to what Decree 4800, Article 279 prescribes that "Public entities that receive comments from the Tables of Participation have the obligation to inform them about the adoption or non-incorporation of the recommendations and the reasons that led to adopt such decision, as well as to answer the questions rose by the Tables in a reasonable term."*

As it was to be expected and indeed happened, in order to have a closer approach to the guarantee of the right to participation, Decree-Law 4800 of 2011, enshrines in its articles 285 and 286 respectively: the preparation of an effective participation protocol, which has been in force from May 10, 2013 contained in Resolution 0388 in the same year, modified by Resolution 00828, 2014 and recently by the Resolution 1392 from December 29, 2016. This protocol was a product of the provision of Law 1448, 2011 in its article 192, and in the article 286 it established the criteria to construct the protocol of participation.

Now, leaving aside the fight on the issue of who is included in the registry of victims and who is not, a situation that is well to say that has originated a great number of legal actions, led by the people who are not included, the authors consider there must be a look back to an issue that had been disregarded in the fight for recognition as the quality of *victim*; which means, the consequences that the recognition and the representation of victims involve, since these concepts are directly related to the balanced and fair participation of all those who may be affected. (Fuentes and Atehortua, 2016). Now, it is also an opportunity to indicate that in the preparation and creation of this protocol - Resolution 0388 of May 2013 - the historical process of negative discrimination against ethnic groups is evident, since the victims who are part of these groups cannot aspire to participate on equal terms with the majority population, as from May 2013, the Victims Unit had ten (10) months to prepare and create its own protocol of participation, in consultation with these groups of people, in observance of their culture, traditions, ancestry among others; now, almost four (4) years have passed and this tool has not been created, implying that, to these three groups, an unjustified time limit on the exercise of the right to participation was imposed on them. This is why; they only have space for one (1) person to participate at the tables of victims of all territorial levels as delegate of each ethnic group: Afro-descendants, indigenous and Rrom.

Regarding participation, as far as the gender approach is concerned, we find that the International Center for Transitional Justice, in an article entitled "We Want to Be Heard", June 2014 states:

"Overcoming these obstacles and guaranteeing women victims' access to the spaces of participation created by Law 1448 of 2011 requires decisive action from the State institutions responsible for their implementation. In order to strengthen the participation mechanisms, therefore, the participation of women victims should be encouraged and

qualified and their proposals made visible" (International Center for Transitional Justice, 2011).

BRIEF SUMMARY ON THE RIGHT TO PARTICIPATION OF THE VICTIMS FROM THE INTERNAL ARMED CONFLICT RESIDING IN THE MUNICIPALITY OF TULUÁ.

To date, the National Information Network report (RNI by its acronym in Spanish) establishes a total of twenty-six thousand nine hundred and eleven (26,911) victims registered in the municipality of Tuluá; corresponding to the rural area, that is, high, lower mountain and flat rural area and the urban perimeter of the municipality. Being forced displacement the one with the highest number among all the victimizing facts (Victims Unit, 2017). However, as has been said previously, at the local level, the election and installation of the Municipal Table of Effective victims' Participation was made; a space that according to the protocol of victims participation, it is formed by a number of no more than 24 members, chosen by the organizations of victims through a democratic process. These tables involve thematic work spaces and participation, in which victims through the delegates can interact with the Municipal Administration, the Department, the Nation and all the entities of the National System of Attention and Reparation to the Victims (SNARIV).

The functions of the Bureau are broad, but it could be said that the most important is to make a verdict on the implementation of law 1448 of 2011 and other regulatory and complementary rules in the territory, concerning to us, the Municipality of Tuluá. According to information obtained, in order to apply the regulations that rules the public policy of victims; it was chosen in Tuluá after fulfilling the process of registration and legal election as prescribed by Resolution 0388 of 2013 Municipal Bureau of Victims for the first time in the 2012-2015 term, since, prior to this date, what existed was a consultation table as a legitimate space so that the victims could contrive their interlocution with the administration and other entities that conform the National System of Attention and Reparation to the Victims (SNARIV).

It should be noted that some members were already concluding the period of two (2) years according to resolution 0388 of 2013, however, that term was modified by Resolution 1392 of December 29, 2016, where the impediment on having spent two periods at the tables disappeared, which means, the possibility that those who are at the table since its constitution continue to shape it and somehow, limiting access to the participation of other people to be able to reach this space. Those who integrate the Bureau are members of the Victims Organizations (OV - by its acronym in Spanish), of which currently twenty-four (24) are registered in the municipal office as such and they house a considerable number of people as victims of the armed conflict, out of the various victimizing acts that the law enshrines.

The structure of the Municipal Table of Effective Participation of Victims of Tuluá is as follows: two (2) representatives from the Victims Organizations (OV) for crimes against life and liberty; two (2) delegates for crimes against physical integrity; two (2) representatives for sexual violence; eight (8) representatives for forced displacement; one (1) by the LGBTI approach; one (1) from the women's organizations; one (1) from young victims; one (1) senior citizen; one (1) in situation

of disability; one (1) by children and adolescents; one (1) from the Afro-Colombian ethnic group; one (1) from the indigenous people and two (2) delegates from the Victim Advocacy Organizations (ODV - by its acronym in Spanish) also registered in the ombudsman office. It is worth mentioning that out of these, the spaces of the following differential approaches are now deserted: LGBTI, youth and indigenous ethnic groups.

The main functions of the Bureau - established in Resolution 0388 of 2013 - are: to interlocate, design, execute, consult, monitor and evaluate the implementation of the law of victims at territorial level and if listed among its main functions are:

- To create strategies for victims and their organizations to know and respect their rights.
- To focus on public policy and territorial action plans.
- To choose representatives in the different committees and subcommittees.
- To ensure accountability to victims.
- To exercise citizen oversight of compliance with Law 1448 and other norms.
- To demand compliance with the law from the competent authority.
- To elaborate an annual work plan that will be integrated into the Territorial Action Plan (PAT - By its acronym in Spanish) for comprehensive care, assistance and reparation to victims.
- To present an annual report on the application of the victims' law to the municipal council. (Gaviria, 2015)

The structure of the table is made up of: the plenary of the table (all its members headed by the coordinator), from which the thematic committees are formed: transitional justice committee, executive committee and ethics committee. In addition, the table is accompanied by the technical secretariat exercised by the municipal ombudsman's office. The information received aims to conclude that today the dynamics of the Victims' Bureau could be perceived as a period of transition and readjustment to their functions, this, with respect to the members of the committees and the whole group. It could even be said that it barely is an implementation period in some things, such as the assumption of the roles by the members of the different committees and the execution of their own functions such as: attending and remaining in the sessions that are established in the work plan that is designed or reformed at the beginning of each year, actively and purposefully participating in them, discussing victims issues in relation to the Effective Enjoyment of Rights (GED- By its acronym in Spanish), present their respective management reports, receive training on what concerns to public policy, the same thing happens with some members of those who come from the previous validity, who claim that it is just beginning to work. It is noteworthy that the current coordination, who has been in practice since May 2016, has stated that no records were received corresponding to the actions carried out before taking over this position (Mesa de Victims', 2017). This situation reveals that it is effectively an operational starting point, since, the work or management during the past validity and from the time that the victims' conciliation table operated is not documented, there is a void that has no way to remedy, reason why their performances remain without record and some practically became nonexistent. As for the discussions within the Bureau, it is worth to mention that they focus on the various issues that thousands of victims day to day must face related to: unsatisfied basic needs, exaggerated procedures

in terms of all the steps that must be taken around their declarations, resolutions of inclusion or non-inclusion in the single registry of victims, applications on different kind such as: humanitarian aid or reprogramming of the same, verification of the shifts in which they receive aid, help to prepare acts of petitions and lawsuits, data updating related to the difficulties related to the subject of military ID, search for productive projects, aids represented in food support, requests for help in the reading and interpretation of the resolutions handed out to victims.

A specific case, of the last mentioned, is when some victims receive their resolution in which the Unit of Attention and Integral Reparation to Victims (UARIV) notifies them if they were included or not regarding the declared facts and those that were corroborated and as stated by the law, a short period of time is allowed, usually only ten (10) days to file any appeal, most of the times they arrive at the office assigned to the victims' table, the term for the issue has already expired; which means that they are legally unable to file a complaint with the entity in the case that what has been resolved is not favorable to them. This precise action constitutes a limit to the right of the victims to participate actively in the decision making that directly affects them. About the members of the Victims' Committee it can be said that there is persistent ignorance concerning the current legal regulations regarding the public policy of victims, the functions and commitments that each one voluntarily accepted after deciding to run for or take on a postulation for the a position within the Bureau, a circumstance that is clearly harmful and even dangerous. Hence, if we speak of a representation space for all the victims in the municipality, the ignorance on legal procedures, as well as the responsibilities that must, according to the law 1448, demand from the administration and the National System of Assistance and Integral Reparation to Victims (SNARIV), coupled with the fact that public officials and contractors also evidence an important level of misunderstanding about the public policy of victims and their implementation, results in a widespread invisibility of the victims and everything that involves them.

Concerning the issues that are most discussed in the different spaces, whether inside the Bureau, the committees or, these and the different dependencies of the administration there can mentioned the needs that directly affect the victims, who are, in their order: housing solutions, generation of income through initiation or strengthening of productive projects, food security and higher education. What means and makes it evident that real participation is deficient and the implementation of the law is still insufficient.

Law 387 of 1997 was the beginning for the implementation of the public policy of victims from forced displacement, now Law 1448 of 2011 is in force, where the key factor to put into consideration has been the participation in the elaboration and implementation of the law. Thus, in order to evaluate the effectiveness of the participation of the target population, elements such as the way in which beneficiaries are linked to each other have been taken into account: the moments in which they are taken into account to discuss issues concerning public policy the kind of participation that institutionalism allows them, the means through which they are summoned, the level of debate, decision and choice they hold. Concluding that the study certifies that the participation of victims is precarious, which in turn weakens democracy making it unproductive. (Fuentes and Atehortua, 2016)

As a conclusion, it could be pointed out that the articulation by the entities of the National System of Care and Reparation for Victims (SNARIV) aims to improve the implementation of victims' public policy, so as to be able to present clear indicators on the GED; extends the possibilities to this population to exercise the right to participation that the norms that regulates the subject deals with and that also was established as one of the principles that conform the Declaration of principles of the 7 of June, 2014 included in the final agreement of peace. Finally, to indicate that the guarantee of the right is raised in a sinequanon condition, the compensation process that has been budgeted could not be mentioned; the same one that allowed to locate the victims from the internal armed conflict as the center of the final agreement for the end of the conflict and the construction of a stable and everlasting peace.

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