

REVIEW

“COMMAND RESPONSIBILITY IN ORGANIZED POWER STRUCTURES CASE STUDY: MAPIRIPÁN AND DISAPPEARANCES FROM THE PALACE OF JUSTICE”

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The book, “Command Responsibility in Organized Power Structures Case Study: Mapiripán and Disappearances from the Palace of Justice”, addresses two complex cases in the Colombian armed conflict, in which there is a possible relationship between the facts of the case and command responsibility in organized power structures. This book is the result of research by the legal clinic “conflict and criminality” at the Universidad Católica de Colombia. Research was carried out using judgments from the Cassation Tribunal of the Supreme Court of Justice in the proceedings against Brigadier General (r) Jaime Humberto Uscátegui Ramírez and then Mayor —now, Lieutenant Colonel (r)— Hernán Orozco Castro in the Mapiripán massacre case, and against Colonel (r) Luis Alfonso Plazas Vega in the case of disappearances from the Palace of Justice.

In Colombian law, command responsibility refers to the author of a crime who uses others to carry out the criminal act through military hierarchy, functional hierarchy, and/or taking advantage of someone with psychological disadvantages. Also, “power structure organizations” refers to an association, group, or organization of people constituted by military hierarchy, including national armies, paramilitary armies, big mafias, and guerrilla or rebel armies.

Mapiripán Massacre Case

The legal clinic “conflict and criminality” sought to apply a thesis Claus Roxin developed to describe the participation of those who use their hierarchy or rank to commit crimes within organized structures by giving orders knowing subordinates will execute them. Therefore, the intellectual author need not coerce or induce the other person to commit a crime.

The Cassation Tribunal of Colombia’s Supreme Court determined Brigadier General Jaime Humberto Uscátegui Ramírez and then Mayor —now, retired Lieutenant Colonel Hernán Orozco Castro were tasked with protecting the population. The Tribunal also determined the military had timely, sufficient and detailed information regarding the actions committed that they were criminally responsible through omission for one the most horrible episodes of Colombian armed conflict.

For the Tribunal, the defendants not only failed to perform their operational and administrative duties in Mapiripán, but they actively intervened in the realization of criminal tasks. Therefore, the criminal actions of the military made them co-authors.

The Court rejected this argument and concluded there had never been an alliance between the accused and the paramilitary groups that committed the massacre. For this reason, the legal clinic “conflict and criminality” partially differs from the Court’s judgment, and, based on the facts as determined by the Inter-American Court of Human Rights in the Mapiripán case, the legal clinic considers the Supreme Tribunal should have found the military officials criminally liable based on command responsibility in organized structures rather than based on liability for omission.

According to the Inter-American Court, the Colombian Army committed international crimes through its actions and omissions, by allowing the absence of control in the Necoclí and Apartadó airports, and through the arrival of paramilitary groups in the San José Guaviare airport and their ground and river transportation to meetings with city officials in Mapiripán. For over five days, the Army tolerated the massacre, torture and disappearance of people from Mapiripán, as well as destruction of evidence by throwing the corpses to Guaviare river.

The legal clinic “conflict and criminality” believes the figure of author of commission by omission must be reserved for investigation and judgment of domestic crimes, but for crimes of this magnitude, the Colombian Supreme Court should have accepted

the foreign thesis, which judicial bodies had already adopted in the Justice and Peace processes that tried state agents for crimes perpetrated by paramilitary groups.

The Colombian Army participated actively in these crimes, and the declaration of the Cassation tribunal of the Colombian Supreme Court of these officials guilty by omission denies this active participation and prevents investigation of the criminal machinery instituted by chains of command.

The case of the forced disappearances from the Colombian Palace of Justice

“Here, defending democracy, master!” were the words of Colonel Alfonso Plazas Vega as he commanded the military operation to release the hostages taken in a siege and takeover of the Palace of Justice by the M-19 guerrilla group that on November 6 and 7, 1985. The historical duty of any state army is to maintain and restore order; nevertheless, the state army must protect its citizens, nationals and taxpayers who are the reason for its existence.

The legal issue in this case is if Plazas Vega is criminally liable through command responsibility, or if, as the Tribunal determined, he is criminally liable through omission for failing to fulfill his duties as a guarantor.

Article 19 of Colombia’s 1886 Constitution, which was in effect at the time of the take over of the Palace of Justice, established “*The authorities of the Republic are instructed to protect all persons residing in Colombia, their lives, honor and properties, and ensure the mutual respect of natural rights, preventing and punishing crimes*”. The political charter established the responsibility of state workers in their actions and omissions, also the abuse of public authorities. At the time of the siege, the Armed Forces were authorities of the Republic tasked as guarantors. This special protection is applicable in the prosecution of domestic, but not international crimes, as the latter require some conduct derived from actions and omissions by state agents.

In the case, “The Disappeared from the Palace of Justice,” the Inter-American Court of Human Rights describes the dastardly behavior and acts committed by members of the Colombian army, and the way these actions were used in the charges against Colonel Plazas Vega inasmuch as he was the visible person responsible for leading the military operative to restore order to the Palace of Justice. However, the Criminal Cassation Tribunal of the Colombian Supreme Court did not condemn

Colonel Plazas Vega as the member of the national army leading the operation to retake the Palace of Justice. Rather, the Tribunal acquitted him, arguing there was insufficient evidence to demonstrate his action or omission, and thus, the Tribunal considered the standard of proof to convict Plazas Vegas of the disappearance of Carlos Rodríguez Vera and Irma Franco Pineda had not been met. The Tribunal did not recognize him as a co-author via his guarantor position, since he did not have the people who left the Palace at his disposal, nor was there evidence Plaza had issued an order to disappear the aforementioned individuals.

The legal clinic considers Colombia's Supreme court should have focused on the fact that international crimes were committed in military installations, and regardless of whether these crimes were the product of an act or an omission, they took place under Colonel Plazas Vega's chain of command. For this type of international crime, the power structure is a requirement, and it is enough to demonstrate the link to the organized power structure. In fact, the distance between the material author and the mediate author can increase the degree of criminal responsibility as the organization's hierarchical structures distance these the person who commits the crime and the one who orders it.

Bibliography

Supreme Court of Justice, Judgment SP-17466-2015 December 16, 2015, R. 38957, File: 203. Disappeared from the Palace of Justice, (facts) numeral 103: the building near the July 20 museum, the *Florero* house, was used by the Colombian Army to coordinate the operation, as well to identify the people exiting the Palace of Justice. who were getting out from the courthouse. Military intelligence authorities recorded, interrogated, and identified the survivors and separated those who were considered suspected about being part of M-19. The majority of survivors were permitted to go to their places of residence or to health centers. However, the survivors the Colombian Army identified as "special" were taken to the second floor of *Florero* museum. Some were remitted to military installations, including the cavalry school of Colombian Army and the intelligence and counterintelligence battalion General Ricardo Charry Solano (BINCI) and battalion Charry Solano. Once detained, some were subjected to torture and later disappeared.

Inter-American Human Rights Court, case of Rodríguez Vera and those disappeared from the Palace of Justice vs. Colombia. Judgment of November 14, 2014.