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ORIGINAL

# Equality of weapons in disciplinary law, within the framework of the general disciplinary code and workplace harassment Colombia 2022 - 2023

# Igualdad de armas en derecho disciplinario, en el marco del código general disciplinario y el acoso laboral Colombia 2022 – 2023

Isabel Cristina Lezama Velásquez[1], Ana Valeria Restrepo Salazar[1]

[1]Facultad de Ciencias Económicas, Administrativas y Contables, Universidad Libre de Colombia. Pereira, Colombia.

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**Editor:** Misael Ron

**Corresponding author:** Isabel Cristina Lezama Velásquez

## ABSTRACT

In the public sphere, Law 1010 of 2006, defined and established as punishable behaviors by way of very serious misdemeanor, any insult to human dignity attributable to public servants involved in labor relations, considering the need to protect, among others, the harmony and a good work environment, which depend on the actions or omissions of workers or employees of state organizations. Now, with the entry into force of the General Process Code, the intervention of a subject within the additional sanctioning process was allowed to the parties that are already recognized in the current procedural law, such as the recognition of the victims in line with what provided in article 109 of Law 1562 of 2019, thus imposing an inequality of subjects and a violation of due process for those investigated, so there should be no more participants in the disciplinary process other than the operator and the subject subject to discipline, under penalty to distort disciplinary law.

**Keywords:** Process; Disciplinary Law; Workplace Harassment.

## RESUMEN

En el ámbito público, la Ley 1010 de 2006, definió y estableció como conductas sancionables a título de falta gravísima, todo ultraje a la dignidad humana imputable a los servidores públicos que intervienen en relaciones laborales, considerando la necesidad de proteger, entre otros, la armonía y el buen ambiente laboral, que dependen de la actuación u omisión de los trabajadores o empleados de las organizaciones estatales. Ahora, con la entrada en vigencia del Código General del Proceso, se permitió la intervención de un sujeto dentro del proceso sancionatorio adicional a las partes que ya se encuentran reconocidas en la ley procedimental vigente, como es el reconocimiento de las víctimas a tono con lo dispuesto en el artículo 109 de la Ley 1562 de 2019, imponiendo con ello una desigualdad de sujetos y una violación al debido proceso para los investigados, por lo que no deberían existir más intervinientes del proceso disciplinario distintos del operador y el sujeto disciplinable, so pena de desnaturalizar el derecho disciplinario.

**Palabras clave**: Proceso; Derecho Disciplinario; Acoso Laboral.

## INTRODUCTION

The Colombian State, in the public sphere and in order to continue guaranteeing life in society and

establishing guidelines that allow everyone to know their rights and duties within it, issued Law 1010 of 2006, which adopts measures to prevent, correct, and punish mobbing and other harassment in the framework of labor relations, This Law defines and establishes as punishable conduct as a very serious offense, any insult to human dignity attributable to public servants involved in labor relations, considering the need to protect, among others, the harmony and good working environment, which depend on the actions or omissions of workers or employees of state organizations.

Labor harassment refers to deliberate and systematic conduct used to humiliate and denigrate another in order to achieve his submission or resignation from his job. This conduct has the potential to cause both physical and psychological harm to the victim, leading to the violation of his or her fundamental rights. In addition, it negatively impacts the work environment of the institutions, which in turn reduces their productivity and competitiveness.[1]

The importance of this issue lies in its nature as reprehensible conduct from a disciplinary perspective. It is considered an extremely serious misconduct, whether committed intentionally or through gross negligence. This may lead to the individual under investigation facing severe disciplinary measures, including removal from office and general disqualification ranging from ten (10) to twenty (20) years. In other words, he/she would be barred from exercising public functions in any position or capacity and excluded from the professional career ladder.

Consequently, this is not a minor conduct. However, one of those punishable conducts that allows manifesting the sanctioning power of the State, so the disciplined must be subjected to a legal and fair process in which he can fully exercise his right of defense and contradiction, fully enjoying the rights and guarantees established by the Constitution, in favor of the imposition of sanctions of such connotation transparent and devoid of any defect of nullity.[2]

Law 1010 of 2006 also establishes special rules for the sanctioning procedure of conduct classified as harassment at work so that it provided, within the disciplinary process, the intermediation of the alleged victims of the conduct as an additional procedural subject, who, along with the subject under investigation, who exercises his right of defense, and the disciplinary operator in his role of knowing, investigating and sanctioning the conduct under the terms of the procedural Law in force, intervene in the action to intervene in order to defend the alleged victims of the conduct as an additional procedural subject; They intervene in the proceedings to support the "accusatory" exercise of the operator, which possibly puts the subject under investigation in imbalance.[3,4]

Therefore, this study aims to address the following research question: How is the principle of equality ensured when implementing Law 1010 of 2006 during the disciplinary process governed by the General Disciplinary Code between 2022 and 2023 in Colombia?

In this sense, the purpose is to evaluate the effectiveness of the application of the principle of equality of conditions within the framework of Law 1010 of 2006 in the context of the disciplinary process in line with the General Disciplinary Code, covering the time interval from its implementation in 2022 to 2023 in Colombia, the principle of equality of arms in Colombian Law will be defined, the procedural subjects in the disciplinary procedure in force from 2022 to 2023 in Colombia will be identified, examining the intervention of the victim of workplace harassment as a procedural subject of the disciplinary process and analyzing whether recognizing the alleged victims of workplace harassment as a procedural subject in the disciplinary procedure guarantees the application of these principles of equality and comprehensive investigation.[5,6]

Disciplinary Law is based on the fact that those misdemeanors that have been typified as disciplinary, in which the investigated and the investigating entity intervene in a general way, are judged; that is, the general rule is that such situations are subject to investigation without the intervention of the victims, having that article 109 of the General Disciplinary Code, included in the investigations for labor harassment the victims, who are considered as procedural subjects, which would put the investigated in a plane of inequality.[7]

Taking into account the above, the research question of this article is condensed into the following question: How is the principle of equality of arms guaranteed in the application of Law 1010 of 2006 during the disciplinary process regulated by the General Disciplinary Code, from its entry into force in 2022 to 2023 in Colombia?

Therefore, we sought to meet the objectives of determining the guarantee of the principle of equality of arms in the application of Law 1010 of 2006 during the disciplinary process regulated by the General Disciplinary Code from its entry into force in the year 2022 until 2023 in Colombia, to define the principle of equality of arms in Colombian disciplinary Law, examining the intervention of the victim in the disciplinary investigation of workplace harassment as a subject in the light of the principle of equality of arms. Thus, it was possible to analyze the equality of procedural arms in the intervention of the victims within the disciplinary process of workplace harassment.

## METHODS

The research is of a qualitative and legal nature, considering that the source of information is the norms

that regulate the disciplinary procedure in force in Colombia and describe the reprehensible conduct of labor harassment, as well as the jurisprudence and doctrine on the matter.[8]

## RESULTS AND DISCUSSION

In the constitutional framework of the Social Rule of Law, the fundamental right to due process and the equality of all parties before the Law are fundamental principles. According to Article 29 of the Constitution, due process is a cornerstone of vital importance that requires meticulous observance and unwavering respect for the guarantees inherent to this right. Among these guarantees are the right to defense and the right to contradiction. Due process, therefore, encompasses the essential regulations designed to safeguard the rights of those subjected to any legal proceeding. It ensures an impartial and adequate administration of justice, fosters legal certainty and promotes the substantiation of judicial decisions by the laws in force.

Along these lines, constitutional jurisprudence has delineated the minimum guidelines defining the right to due process: " The right to due process refers to the fundamental right of any individual to a fair and adequate administration of justice. A process is considered 'due' when it complies with all the requirements, conditions, and demands necessary to ensure the full effectiveness of the right in question.".[9]

Within the framework of this perspective, it is clear and pertinent concerning the subject under analysis that the actions carried out by the administrative authorities must be in full compliance with the regulations governing the relevant procedures in order to protect the rights and responsibilities of those involved in a legal relationship. This becomes particularly important when such actions result in the creation, modification, or termination of rights, as well as the imposition of sanctions. The primary focus in these cases is to ensure the effective defense of the individuals involved.

Within the framework of the rule of law and in strict accordance with the principle of legality, due process stands as a bulwark, excluding any action that contravenes or exceeds the law. In line with other facets of the state function, the administration of justice is subject to the guidelines of the legal sphere. This operation can only be carried out by the parameters pre-established by general and abstract regulations, which bind public servants in both a positive and negative context. Such agents can only act by the provisions of the law, basing their actions on the competencies previously granted to them.

The right to due process is configured as the guarantor of a fair administration of justice, establishing as "due" that process that complies with all the indispensable conditions to ensure the effectiveness of substantive law.[9]

In this context, it is crucial to note that due process is intrinsically related to the fundamental constitutional norms that seek to establish a just order. This implies that the public authorities must govern their actions in accordance with the organic norms of the Constitution and in tune with the established values, principles, and rights. The primacy of substance over formalities is a legal custom that prevails in the administration.

Furthermore, the right to due process is closely linked to the presumption of innocence. According to Articles 10 and 11 of the Universal Declaration of Human Rights, the right to a fair and public trial before an independent tribunal is guaranteed, as well as the presumption of innocence until legally proven guilty. This ensures adequate defense.

The regulations state that no convictions shall be handed down for actions or omissions not considered criminal at the time. Nor shall harsher penalties be imposed than those applicable when the crime was committed.

According to the International Covenant on Civil and Political Rights, all persons are assured the right to be heard within a reasonable time by a competent and impartial judge, both in criminal cases and in determining civil, labor, or fiscal rights and obligations. This guarantee ensures fair proceedings and the protection of fundamental rights.[10]

In addition, the principle of the presumption of innocence must prevail, ensuring that a person'sperson'sperson's guilt is legally determined before any sanction. This principle of presumption of innocence is essential to safeguard due process and maintain procedural fairness. In line with this, it underscores the need for compliance with all procedural guarantees framed by the principle of equality.

The safeguarding of due process is a cornerstone in the normative and jurisprudential framework. Fundamentally anchored in the fundamental principles of the Constitution, it stands as a determining factor in ensuring that the actions of the public authorities, intertwined with the administration, are governed not only by organic constitutional regulations but also by the values, principles, and rights that make up the legal substrate. It is crucial to emphasize that this approach adheres to the legal custom that prioritizes substance over formalities.[11]

The fundamental right to due process encompasses a wide range of individual rights based on the concept of justice and the safeguards that protect persons subjected to legal proceedings. This right applies to judicial processes and administrative proceedings, requiring strict adherence to the law to ensure fairness and equity at all times.

In line with the above, the principle of contradiction is one of the inherent elements of due process. As mentioned above, this principle translates into the ability to know and refute decisions, evidence, and claims in any process governed by law. This premise is fundamental to ensure the effective application of the right to due process since it cannot be conceived without providing adequate opportunities to question what has been debated and decided.

The adversarial principle is not limited to the ability to question but also promotes the legal validation of provisions, evidence, and arguments. In addition, it facilitates the consideration of discordant arguments that still conform to the legal framework, ensuring that actions are more legal and less unfair. According to some authors, "the observance of due process and the principle of contradiction not only strengthens legality but also promotes justice in the administrative context".[12,13]

Within the scope of disciplinary law, the application of discretionary power is also evident, and it should operate broadly, in line with the system of checks and balances proposed by Montesquieu. This system prevents the existence of absolute powers and ensures that no power is unlimited, which is in line with the principle of relativity.

Discretion in the legal sphere finds its rule and measure in reasonableness. It is a power within the legal framework, which implies the exercise of limited and balanced decision-making powers. The exercise of competence in the legal context is equivalent to the satisfaction of the general interest and, therefore, is based on the evaluation of the factual aspects to adopt the most appropriate decision in favor of the community. According to Decision T-458[9] of the Constitutional Court, it is imperative to remember that when the law grants discretion, the condition is that such power be exercised in a manner consistent with the objectives of the regulation and proportionate to the events that give rise to it.

Within the framework of this reflection, it is vital to understand that the discretionary power does not imply authorization for the administrative authorities to act arbitrarily. On the other hand, state powers are not an end in themselves but rather a means in the service of society. The decisions emanating from these authorities arise from the organization of events to achieve a defined objective.

In line with this notion of discretion, it is relevant to emphasize that the Constitutional Court has distinguished between two types of discretion. In the first place, there is absolute discretion, which would imply making administrative decisions without substantiated justification. Such a form of action could be confused with arbitrariness, a concept that has no place in the framework of contemporary law. Secondly, there is relative discretion, which differs from the mere whim of an official.

This form of discretion empowers the official to assess the current circumstances, conformity, and comfort surrounding the adoption of a decision: "In contemporary law, it is essential to distinguish between two types of administrative discretion: "absolute and relative discretion. The former, which involves the ability to make administrative decisions without a justified rationale, can be confused with arbitrariness and lacks support in the current legal framework. On the other hand, relative discretion, far from being associated with capriciousness, allows the official to assess the factual circumstances and the opportunities and conveniences surrounding the decision-making process. This gives the official the option to act or refrain from doing so, or to select the scope of his boldness, always within the general intentions inherent to the public function and the specific ones implied in the regulations that support the discretionary decision".[14]

Under these assumptions, all actions of a public official, by Article 123 of the Political Constitution of Colombia, must be by "the constitution or the law," i.e., their actions must always be oriented to comply with the legality that inspires the Colombian legal system, even more so when it comes to people who are responsible for the fulfillment of the purposes of the State, the service to the Corporation, finding at the service of those purposes the disciplinary process, regulated by various laws, which are ultimately embodied in Law 1569 of 2019, regulating the disciplinary action and its procedure unifying the procedure for practical purposes of the same.

Now, every process requires the establishment of either a petition, complaint, claim, or action, which is generally in the head of the person affected by facts developed by a certain person. Thus, the disciplinary process is initiated through what is known as disciplinary action, being a power that is in the head of the State putting into operation the jurisdictional apparatus, seeking to investigate in order to discover the truth, imparting justice.[12] Thus, as established by Law 1562 of 2019, in Article 1, the ownership of the disciplinary exercise is in the head of the State, as established by the Constitutional Court: in the context of the disciplinary process, its purpose lies in ensuring rigorous supervision of the observance of the special duties assigned to public employees and, therefore, their consequent responsibility. In addition, it seeks to maintain integrity in training the public function, adjusting to the cardinal principles of economy, morality, efficiency, celerity, and impartiality. However, it is essential to emphasize that the severity and exemplarity expected when sanctioning the official at fault must not undermine the guarantees that correspond to any individual under investigation, especially the right to be heard and to present evidence to refute the allegations against him.[15]

The doctrine has established that the procedural presupposition and the body of evidence for the opening

of the corresponding disciplinary investigation is the certainty of the person who may have incurred the disciplinary offense under investigation, seeking to establish whether or not the offense existed and under what assumptions. It does not mean in any way that the fact of opening a disciplinary investigation against a certain public official will result in a final judgment against him since the disciplinary process must allow the development of the right to protection and the fact that the conceit of naivety is not disproved until the contrary is proven.

Within the broad spectrum of rights, the fundamental principle of fairness in the contest emerges, which is materialized in the need for each party to have the ability to present its case without implying a disadvantage compared to its adversary. This notion is reflected in the materialization of the principle of equality before the law, which becomes palpable in facets such as equal opportunities in the participation of the process and uniformity in the application of the arguments presented so that they extend equitably to all parties involved.[16]

Such principle is applied or evidenced in criminal law. However, it has been revealed that the same happens in disciplinary law since the accuser and the defender hold unequal positions, and the former has discretionary power when initiating the disciplinary investigation. The first involved enjoys a more favorable position than the second since the defending party lacks an equivalent organizational structure for collecting and presenting evidence during the procedure. Therefore, it is necessary that in any process, measures that contribute to material equality are adopted, not just mathematical ones.

**The victim is a procedural subject of disciplinary law**

The role of the victims within the disciplinary process is a situation that has been debated within the Constitutional Court, finding an approach in 2004 towards the possibility of considering it as a procedural subject, indicating that in the framework of disciplinary law, In this context, the Constitutional Court has stated that in the framework of disciplinary law, misconduct related to the functional duties of the prosecutable subjects is judged, without specifying the violation of a legal right but as the infringement of duty, so that in principle it would not be plausible to state that there is a person affected by the occurrence of intransigent misconduct. In this context, the Constitutional Court emphasized in Judgment C-014 of 2004 that in the framework of the disciplinary process, the presence of victims is not considered since this situation emerges as a result of the nature of the accusation that is formulated.

The exception to that rule was given via jurisprudence by the same Corporation, specifying that it can speak of victims when the existence of misconduct for violation of human rights or serious violations of international humanitarian law is proven.[17]

These same considerations were recently taken into account by the Collegiate Court when studying the validity of the recordings in the framework of a disciplinary process, indicating that:

This instance recognizes that the previous arguments were intended to clarify the participation of individuals affected by human rights violations or international humanitarian law in the framework of the disciplinary process. However, this reasoning is relevant only to the extent that the limitation to this participation derives precisely from the absence of the notion of "victim" in the field of disciplinary law.

This being so, when addressing the issue of providing evidence such as non-consensual recordings in the context of criminal law, it is established that such evidence must be presented by the victim himself, who is the person who experiences the harm caused by the conduct in question. However, in the field of disciplinary law, where the notion of "victim" does not find a place to the same extent, transferring this argument without further analysis brings challenges. For example, applying the "victim" criterion of criminal law could lead to the exclusion of recordings evidencing disciplinary misconduct, even if they were not made by the person affected by such conduct. Moreover, this perspective could orient the debate towards the determination of the harm rather than the occurrence of the conduct itself.

Applying the aforementioned jurisprudential precedents, it is established that the person making the recording must belong to the family, social, or trade environment in which the conversation originates or be covered by the public, semi-public, or semi-private sphere in which such interaction takes place. This regulation excludes, for example, any form of intervention of communications without a court's approval, as well as any other form of recording by third parties who have no connection with the protected space in question.[18]

Although the validity of the evidence obtained by recordings was analyzed in contrast with the right to privacy, the truth is that to arrive at that concept, it was necessary to study the concept of the victim.

However, this panorama changed with the issuance of the General Disciplinary Code since the person who suffers harassment at work was expressly incorporated as a victim in compliance with the provisions of Article 17 of Law 1010 of 2006, and it should be considered that being recognized as a procedural subject in the framework of the disciplinary process, allows to request, provide and dispute the evidence; to file appeals, submit requests aimed at ensuring the legality and purpose of the disciplinary action.[19]

Moreover, is that the consideration of the victim in the framework of disciplinary law is that what is verified is the substantial unlawfulness of an action that affects functional duties, contrary to criminal law where

the unlawfulness is analyzed in the face of the legal goods protected by the order; but currently, in the disciplinary action, Law 1952 of 2019 establishes a scenario in which the victims would be involved in the evaluation of certain infractions, such as significant violations of human rights and international humanitarian law. Additionally, this involvement would also extend to situations of workplace harassment, where victims would have the opportunity to present and describe incidents that affected their functional duties.[20]

**Implications of the victim's action in disciplinary law, disadvantages for the disciplined**

It should be taken into account that the victims also have other means of control for the training of their retribution and the compensation of the damages they claim for the occurrence of labor harassment, such as direct reparation.[21,22,23,24,25] which the Council of State has defined in the following terms: "Evaluating the viability of the direct reparation action aimed at seeking compensation for damages arising from workplace harassment acquires a role of relevance in the legal field. In this context, it is verified that the conducts that constitute workplace harassment were previously prohibited by the legal regulations even before the enactment of Law 1010 of 2006".

In this context, it is essential to highlight that the damages resulting from this phenomenon are distant from the ordinary and routine taxation of public service since they arise from notable deficiencies in executing such service. Consequently, according to the legislation of the Third Section of the Council of State, the full compensation of these damages can be claimed through various legal means such as ordinary labor action, the operation of invalidation, and recovery of the right in the case of employees with labor relationship, or through the operation of direct compensation.

This alternative remains feasible, even though, from the point of view of the occupational safety system, these damages can be interpreted as immediate results of accidents or illnesses in the workplace. Therefore, they could give rise to the disbursement of predetermined compensation for situations of this nature.

In line with the current jurisprudential trend regarding the procedural options available to those harmed by their employer or within the framework of an employment relationship, the particular relevance of this position in the context of public officials facing harassment in the workplace is evident. This approach is particularly relevant because, as previously mentioned, both before and after the enactment of Law 1010 of 2006, these individuals lacked clear and mandatory guidelines to protect themselves from this situation. The lack of precision in this regard opens the door to exploring different defensive strategies and, consequently, to different ways to achieve the reparation of the damages suffered.

Undoubtedly, given that most of the actions that constitute labor harassment oppose the laws in force they did not impede the workers affected by labor harassment, both before Law 1010 of 2006 and especially after its enactment, to formulate petitions to their employers. Through these petitions, they sought to invoke the legal protection provisions to end the harmful conduct and seek redress and compensation for the damages derived.

These actions could have resulted in the issuance of administrative acts whose "legality" could be challenged in terms of "nullity and re-establishment of the right." However, given the particularity of labor harassment, especially the type that, according to "Law 1010 of 2006", seeks to "instill fear, intimidation, terror and anguish" (article 2) and occurs within the very entity where the claim must be filed, it is "understandable that the victims resort to the direct reparation action" without the need to previously exhaust this avenue before resorting to the jurisdiction. This choice is understandable given that, in the absence of a "legal statute of limitations requiring the exhaustion of this remedy, the victims seek to be compensated for all the damages that the harassment above at work has caused."

As detailed in section IV.1, it is crucial to remember that, on many occasions, different expressions of workplace harassment take the form of administrative acts. In such situations, such acts may objectively harm the victim's working conditions, disguised as measures to meet the demands of the service. In such contexts, it is clear that similar to the approach adopted by the Constitutional Court, in similar situations, it is necessary to differentiate the analysis of the legality of the administrative act and the possible restorative implications that would derive from its annulment from the claim for compensation that could arise from the damages caused due to the harassment. The latter perspective of workplace harassment, characterized by its persistence and generally not restricted to a single act, demands a different approach in terms of assessment and compensation.

In these situations, it is imperative to consider that, as long as the administrative act has not been subject to annulment, its basis is invested with a presumption of legality, and the damages that have resulted from such an act are also assumed to be legal. In the context of a claim for direct reparation seeking compensation for damages arising from a workplace harassment case, it is imperative to recognize this reality fully. The plaintiffs allege that a portion of this labor harassment is materialized through an administrative act. However, it is essential to consider from another point of view that the action for direct reparation should not become an alternative means to circumvent the appropriate legal procedure to challenge the legality of administrative acts.

In the current situation, it is found that despite the plaintiff's yearning to obtain compensation "for the

damages and injuries resulting from the occupational disease that impacted Mrs. Ana María Amézquita Barrios while she was performing her work as a public servant at the Main Office of the Registry of Public Instruments of Ibagué." it is crucial to highlight that the incidents indicated as causing such damage, specifically linked to the alleged harassment at work to which she was allegedly subjected by her hierarchical superior, together with the lack of adoption of preventive measures, are outside the scope of the "regular and usual provision of the service."

This is because, if proven to be true, these events would constitute flagrant deficiencies in service provision.

In this sense, the direct reparation action that has been filed is appropriate by the criteria of the Council of State in its decision of the Contentious Administrative Chamber, Third Section - Subsection B, radication number: 73001-23-31-000-2008-00100-01(40496).[26]

It is also relevant to note that about damages originating in situations of workplace harassment, the analysis must be made considering other fundamental rights, such as the right to work, which is established as an essential prerogative under the special protection of the State, as outlined in Article 25 of the Colombian Political Charter. In turn, Article 53 of the same Constitution contemplates the minimum principles for the labor relationship, including the development of labor activities in a dignified manner.[27]

In line with safeguarding these fundamental rights, Law 1010 of 2006 was enacted to establish a framework for action. According to Article 1 of this law, its objective is to "Establish, anticipate, rectify and apply disciplinary measures to the multiple manifestations of aggression, abuse, humiliation, disrespectful treatment and, in general terms, any behavior that undermines the intrinsic dignity of individuals who perform their duties in the context of labor relations, both in the private and public spheres.

## CONCLUSIONS

The disciplinary process, conceived as an instrument of supervision of the actions of those who perform public functions, has undergone extensive development through Law 734 of 2002 and the constitutional rulings that have shaped its interpretation. These approaches have been more recently integrated by Law 1562 of 2019, which has unified the situations and explicitly designated the victims as procedural subjects, covering not only cases of serious violations of Human Rights and International Humanitarian Law but also incidents of workplace harassment.

This normative analysis reveals that, in general, the disciplinary process does not contemplate the participation of victims as an inherent aspect. Law 734 of 2002, in its original version, did not grant victims the category of procedural subjects. However, this notion was incorporated within the limits delineated by those decisions through jurisprudential rulings such as judgments C-014 of 2013 and T-473 of 2017. Ruling T-473, for example, recognized the role of the victim of an extrajudicial execution perpetrated by a state agent, especially in the case of a minor. In this instance, the Constitutional Court upheld the rights to equality and due process in the case of a serious violation of human rights. It was oriented towards a superior protection of the fundamental guarantees of children and adolescents.

The situation's dynamics underwent a significant transformation with the enactment of Law 1562 of 2019, with its amendments introduced by Law 2094 of 2021. This development marked progress that stood on the principle of equality, but this time, it was directed towards the persons affected by disciplinary proceedings. The purpose was to safeguard the material truth. With this reform, victims could act through a legal representative to request evidence, reinstate decisions, request the termination of the process, and, ultimately, exercise active participation in all phases of the procedure (Vargas Reyes, 2022).

Doctrinal analyses underline that these determinations are justified, given that disciplinary authorities cannot rely on criminal investigations in cases such as serious human rights violations or labor litigation related to workplace harassment. In such circumstances, the procedural pieces must not await the migration from criminal investigations to the disciplinary process, thus requiring the direct participation of the victims in order to reach a material truth in these cases. This evolution is supported by the international understanding that disciplinary processes, due to their investigative delay, are inefficient enough to judge, punish, and repair the consequences of human rights violations (Inter-American Commission on Human Rights, 2003).

Although the adjudication of human rights violations and labor harassment is explicitly mentioned in this instance, it is imperative to recognize the need to establish procedures that ensure material equality between the disciplined and the other subjects in similar cases. With the intervention of additional subjects, specifically victims recognized as active procedural subjects, the disciplined person could face a procedural burden similar to that of a criminal defendant. In this context, he/she would be subject to the action of the investigating entity, the Public Prosecutor's Office, and the victim.

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## CONFLICT OF INTEREST

The authors declare that there is no conflict of interest.

## AUTHORSHIP CONTRIBUTION

*Conceptualization:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Data Curation:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Formal analysis:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Research:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Methodology:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Project administration:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Resources:* Isabel Cristina Lezama Velásquez Lezama, Ana Valeria Restrepo Salazar.
*Software:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Supervision:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Validation:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Visualization:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Writing - original draft:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.
*Writing - revision and editing:* Isabel Cristina Lezama Velásquez, Ana Valeria Restrepo Salazar.