



La buena fe exenta de culpa: utopía de los opositores ante las decisiones del Tribunal Superior del Distrito de Cúcuta- Sala Civil Especializada en Restitución de Tierras

Good faith without guilt: ideal scenario of the opponents regarding the decisions of the Superior Court of the District of Cúcuta - Civil Chamber Specialized in Land Restitution

Cristian Antonio Bohórquez Galviz¹

Especialista en Derecho Penal

Email: abohorquezasociados@gmail.com

Orcid: <https://orcid.org/0009-0007-8128-3856>

¹ Universidad Santo Tomás Sede Bogotá D.C, Colombia,

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RESUMEN:

Este artículo sobre los procesos de restitución de tierras en Colombia establecidos en la Ley 1148 del 2011, nos muestra de donde proviene estos procesos que se contemplan como medidas de reparación para las víctimas del conflicto armado, se establecen su dos etapas procesales: administrativas y judicial, así como recursos y mecanismos utilizados por los opositores que son los actuales titulares de los predios en disputa y que dentro del término de 15 días realiza la contestación oponiéndose a pretensiones para su reconocimiento y finaliza con los parámetros para configurar los elementos objetivos de la buena fe exenta de culpa en los fallos expedidos por el Tribunal Superior de Distrito Judicial, Sala Civil Especializada en Restitución de tierras de la ciudad de Cúcuta en la compra de predios rurales del departamento del Cesar, es una investigación documental con técnica interpretativa, analítica propia de las ciencias sociales, en donde se aplicó la metodología hermenéutica jurídica con la revisión legal de la jurisprudencia para resolver la pregunta problema y así poder establecer la conclusión sobre la buena fe exenta de culpa como una utopía de los opositores ante decisiones jurisprudenciales en salas especializadas de restitución de tierras de Norte de Santander.

Palabras clave:

Buena fe, elemento objetivo, elemento subjetivo, etapa administrativa, etapa judicial, restitución de tierras, opositores, víctimas.

ABSTRACT:

This article about the land restitution processes in Colombia established in Law 1148 of 2011, shows us where these processes come from, which are considered as reparation measures for the victims of the armed conflict, their two procedural stages are established: administrative and judicial, as well as resources and mechanisms used by the opponents who are the current owners of the properties in dispute and who within a period of 15 days make the response opposing claims for recognition and end with the parameters to configure the objective elements of the good faith-free faith in the rulings issued by the Superior Court of the Judicial District, Civil Chamber Specialized in Restitution of lands of the city of Cúcuta in the purchase of rural properties in the department of Cesar, is a documentary investigation with interpretive technique, own analysis the social sciences, where the legal hermeneutic methodology was applied with the legal review of jurisprudence to resolve the problem question and thus be able to establish the conclusion on good faith exempt from fault as a utopia of the opponents of jurisprudential decisions in specialized chambers of restitution of lands in Norte de Santander.

Keywords:

Good faith, objective element, subjective element, administrative stage, judicial stage, land restitution, opponents, victims.

Autor para correspondencia

Correo electrónico: abohorquezasociados@gmail.com (Cristian Antonio Bohórquez Galviz)

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Introduction

The Colombian State, in its effort to compensate victims of the armed conflict who were compelled to vacate their land, and to reinstate the original legal status of these properties prior to dispossession or displacement, as a legislator has limited legislation to necessitate that the current owner, referred to as the 'opposing party,' must exhibit impeccable good faith to substantiate their rights, which is within the transitional justice framework for land restitution although it neglects previous legal transactions executed in good faith according to civil and commercial law, as dictated by relevant codes and customary practices, alongside the principles of substantive law and its legitimacy.

In the administrative and legal processes of land restitution, the potential victim is afforded significant protection regarding her testimony, which is believed to be in good faith, as stipulated in Article 5 of Law 1448 of 2011. Conversely, the burden of proof rests with the opposing party, as stipulated in the preceding law referenced in Article 78, which states, "transfer the burden of proof to the defendant or to those contesting the victim's claims," and Article 88, which requires that in opposition, they must demonstrate good faith as a defense against culpability. Congress of the Republic of Colombia, Law 1448 of 2011.

The hybrid structure of the restitution action serves as a mechanism to address victims' claims about land restitution on a broad scale, facilitating regulation of victims' access to the court system and thereby averting system overload and inefficiency (Serrano, 2011). The Constitutional Court has rendered several decisions about good faith without blame, including rulings C-820/12 and C-330/16, among others, which posits that good faith devoid of fault necessitates two components: a subjective aspect, characterized by "acting with loyalty," and an objective part, demanding "security in actions," attainable solely through proactive measures aimed at reinforcing such certainty.

The Superior Courts of Judicial District, Civil Chamber Specialized in Land Restitution, have ignored the rights of opponents, creating legal instability. They victimize and dispossess current owners and good-faith possessors, leaving them highly vulnerable, which is seen as inconceivable to restore a right by generating harm to a third party who was not responsible for the damage. Therefore, based on the preceding analysis, this study aims to address the following research question.

¿ What criteria are established to define the objective elements of good faith without guilt in the decisions rendered by the Superior Court of the Judicial District, Civil Chamber Specialized in Land Restitution in Cúcuta, concerning the acquisition of rural properties in the department of Cesar from 2020 to 2022?.

Methodology

This documentary research utilized an interpretative, analytical methodology typical of the social sciences and legal hermeneutics, which conducted a jurisprudential review based on legal hermeneutics, as well as criteria to delineate the objective components of

good faith without fault in the decisions rendered by the Superior Court of the Judicial District, Civil Chamber Specialized in Land Restitution in Cúcuta, regarding the acquisition of rural properties in the department of Cesar. Such legal hermeneutics were conducted by analyzing the jurisprudence of 17 rulings.

Land Restitution Processes in Colombia: Interpretations of Law 1448 of 2011

On June 10, 2011, Law 1448 of that same year was enacted, establishing measures for the care, assistance, and comprehensive reparation of victims of the internal armed conflict and including additional provisions. (Congress of the Republic of Colombia, Law 1448 of 2011). This law aims to set forth a series of judicial, administrative, social, and economic measures, both individual and collective, within a transitional justice framework. Law 1448 of 2011 defines who may be deemed victims of the conflict and outlines the processes through which they may seek reparation and compensation from the State. It specifies that all individuals who have suffered acts of violence starting from January 1, 1985, may pursue these reparations, as stipulated in Article 3°:

“Victims: under this law, victims are defined as individuals or groups who have experienced harm resulting from events since January 1, 1985, due to violations of International Humanitarian Law or egregious breaches of international Human Rights standards related to the internal armed conflict.” Congress of the Republic of Colombia, Law 1448 of 2011.

The legislature intended for all individuals who can prove they were victims of the armed conflict to receive restitution measures, as outlined in Article 69.

“Restorative measures.” Individuals protected by this legislation are entitled to reparative measures focused on restitution, compensation, rehabilitation, satisfaction, and assurances against recurrence, encompassing individual, collective, material, moral, and symbolic aspects. Each of these measures shall be enacted to benefit the victim, contingent upon the infringement of their rights and the nature of the victimizing act. (Congress of the Republic of Colombia, Law 1448 of 2011.)

Designated victims may solicit reparative measures from the Colombian State, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, encompassing individual, collective, material, moral, and symbolic aspects. Significantly, a commonly sought remedy is the repatriation of abandoned property or an equivalent asset where the return to the original property is impracticable, accompanied by compensation from the State to the claimant.

Land Restitution

According to Article 71 of Law 1448 of 2011, restitution is characterized as the execution of steps aimed at reinstating the circumstances to their state previous to the victimizing incident. Victims may be compensated through the restitution of the property from which they were stripped. However, in certain cases, depending on the circumstances, if the original property cannot be restored, restitution will be made with a property of similar characteristics. Economic compensation will follow if neither option is feasible, as outlined in Article 72 of Law 1448 of 2011.

In cases where the legal and material restitution of the dispossessed property is impossible or when the victim cannot return due to risks to their life and personal integrity, alternative restitution options of equivalent value will be offered, allowing access to land with similar characteristics in another location, after consulting with the claimant. Monetary compensation will only proceed if none of the forms of restitution are possible, as established by Article 72 of Law 1448 of 2011 (Congress of the Republic of Colombia, Law 1448 of 2011).

The applicant must specify if they intend to return to the dispossessed property or, due to security concerns, prefer an alternative property, as the victim may be unable to return to where they were displaced. This process must adhere to the stages and standards set forth by Law 1448 of 2011 to advance with reparation.

Administrative Stage

A citizen who perceives they have incurred damage due to armed conflict—resulting in the abandonment or displacement from a property to which they had rights, whether as an occupant, possessor, or owner—must contact the Special Administrative Unit for Land Restitution Management to petition for the property's registration in the single registry of abandoned or dispossessed lands. To do so, the applicant must specify the violent incidents that resulted in their displacement from the vicinity of the property.

Once the request is received, the Land Restitution Administrative Unit (hereinafter URT) shall, upon finding grounds to initiate the administrative stage of the procedure, issue a Resolution to formally commence the evaluation of the request, which will include the relevant orders to notify both national and municipal entities, as well as individuals who may have an interest in or be impacted by the resulting decision. This process allows current holders of real ownership rights or those in possession or occupation of the property to come forward.

Subsequent to this notification, a 10-day time will be allotted for people asserting any rights over the property to establish their connection by presenting the requisite documents that validates their claim to the asset.

Upon completion of this initial stage of the procedure, the URT will initiate the evidential phase by a substantiated administrative act in accordance with Article 2.15.1.4.3 of Decree 440 of 2016. Following the collection of the mandated evidence in this phase, a decision will be rendered on the registration of the requested property in the Registry of Dispossessed and Forcibly Abandoned Lands, as per the stipulations outlined in Article 2.15.1.4.5 of Decree 440 of 2016. This choice must be justified and conveyed to the people who may benefit from or be impacted by it.

Should the prior ruling require the registration of the property in the Registry of Dispossessed and Forcibly Abandoned Lands, a written request must be prepared and submitted to the judicial office having authority over the property's location. This filing commences the court process, to be overseen by the Civil Circuit Court for Land Restitution.

According to Article 76, a procedural condition mandated by law states: “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” (Congress of the Republic of Colombia, Law 1448 of 2011).

The State has established the “Registry of Dispossessed and Forcibly Abandoned Lands” by this statute to register those who have been coerced to abandon or relinquish their lands.

This registry shall include the following information:

- The property subject to dispossession or forced abandonment.
- The victim.
- The victim’s family unit.

Once the request is received, the Special Administrative Unit for the Management of Dispossessed Land Restitution will notify the current owner, possessor, or occupant of the property in question. This party will then have the opportunity to demonstrate their legal relationship with the property, showing that ownership was acquired in good faith, in accordance with civil and commercial law.

In the land restitution process, the burden of proof is reversed, meaning that any party opposing the victim’s claims must provide all necessary evidence to disprove the victim’s assertions.

Judicial Stage.

At the outset of the court phase of land restitution processes, a singular proceeding occurs in which the burden of proof is shifted to the opposing parties. Article 79 of Law 1448 of 2011 delineates the authority and abilities of courts and magistrates for these instances.

Article 79: “Authority Regarding Restitution Procedures”. The Magistrates of the Civil Chamber of the Superior District Courts, specializing in land restitution, will adjudicate land restitution cases in a single-instance process, including the formalization of titles for those dispossessed or compelled to vacate their lands, when opposing parties are recognized in the proceedings. Furthermore, they will evaluate rulings rendered by the Civil Circuit Judges specializing in land restitution” (Congress of the Republic of Colombia, Law 1448 of 2011).

Upon the completion of the administrative phase and the fulfillment of procedural requirements, the Civil Chambers of the Superior District Courts, which specialize in land restitution, will adjudicate land restitution cases in a single-instance process. This occurs when legal standing is conferred upon opposing parties—characterized as individuals who have demonstrated ownership, possession, or occupation of the property and aim to contest the assertions made by victims in restitution proceedings.

Once the opponent has established their legal relationship to the requested property, they shall be afforded a time of 15 days from the date of notification to submit their objections to the victim's claims.

Upon recognition of the opposition, the Civil Chamber of the Superior Judicial Tribunal, which specializes in land restitution, will render a final decision about the process. In such instances, Civil Circuit Judges, who are also experts in land restitution, would oversee the proceedings until judgment is rendered, after which the matter will be transferred to the Superior District Court for jurisdictional purposes.

Consequently, it may be deduced that, upon the completion of the administrative phase and procedural prerequisites, the Civil Circuit Judges specializing in land restitution are tasked with addressing objections from the current owner, possessor, or tenant of the property. They are to collect all pertinent evidence, conduct hearings to receive witness statements from both sides, and permit a thorough elucidation of the relationship with the property and their understanding of it. Upon the Judge's completion of all requisite acts, the matter is submitted to the Court, where the presiding Magistrate will evaluate all evidence. The Magistrate may solicit more evidence or remand the case to the Judge to resolve particular matters if necessary. Subsequent to this review, the Court will solicit the parties to submit their conclusive arguments before it.

Upon the completion of all phases, the Magistrate will compose the proposed verdict and submit it for deliberation with the other Magistrates in the land restitution chamber. Upon the presentation of it and the attainment of a quorum, the verdict will be officially declared.

If legal standing has not been conferred to the opposing party, the Civil Circuit Judge specializing in land restitution will adjudicate the case in a single-instance procedure.

Actions against the Verdict

As it was previously stated, the ruling rendered by the Judge or Magistrate specializing in land restitution is a final decision, when applied, an appeal for review may be submitted to the Civil Chamber of the Supreme Court of Justice, pursuant to Article 355 of Law 1564 of 2012.

Appeal for Review

The extraordinary appeal for review may be filed within two years following the judgment. Article 355 of the General Code of Procedure outlines the grounds for which this appeal is permissible. According to the law, the opposing party has only the option of filing an appeal for review once an unfavorable judgment has been issued, based on the aforementioned grounds.

Although the legislator, in Law 1448 of 2011, provided only the extraordinary appeal for review against the judgment, opponents have also employed other mechanisms to challenge the ruling, such as the following:

Modulation

According to the Council of State, modulation is intended to ensure the full enjoyment of fundamental rights for individuals who, although not directly involved in a judicial process, are in similar conditions to those for whom a constitutional protection order was issued so that these individuals to benefit from the effects of the judgment issued by the court, as excluding them would infringe upon their right to equality by the judicial authority (Council of State, Administrative Litigation Chamber, Case No. AC 47001 23 31 000 2007 00437 01).

Writ of Protection

If the opposing party does not meet the criteria for submitting an extraordinary appeal for review but contends that their fundamental rights have been infringed, they may file a writ of protection as a remedial measure. It may be taken to the Supreme Court of Justice against rulings rendered by specialized land restitution tribunals. The writ of protection must be submitted within six months of the ruling and should be utilized merely when no other special appeal is accessible.

Los magistrados de la Corte Suprema de Justicia, al admitir la acción de tutela examinará el caso en concreto y si son reconocido los derechos fundamentales mencionados por el tutelante, la Corte ordenará al Tribunal modular su sentencia y reconocer los derechos del opositor.

Once the first instance of the writ of protection is exhausted before the Civil Chamber of the Supreme Court of Justice, and if the ruling is against the petitioner, further review—if pursued—falls under the jurisdiction of the Labor Chamber of the same Court. Should this chamber uphold the previous ruling, the writ of protection must then be forwarded to the Constitutional Court for potential review. If selected, the Constitutional Court will examine the facts and, if deemed appropriate, either uphold the previous judgments or issue a new decision, as occurred in the recent jurisprudence set forth in ruling SU-163 of 2023, which, in its content, provides the following resolution:

Second: to reverse the writ of protection determination rendered by the Labor Chamber of the Supreme Court of Justice on September 23, 2020, which affirmed the initial writ judgment delivered by the Civil Chamber of the Supreme Court of Justice, which in turn, rejected the initial verdict of protection sought by Agroindustrial Villa Claudia S.A. The Court mandates the safeguarding of the petitioner company's fundamental right to due process in case file T-8.101.824 (Constitutional Court of Colombia, 2023, Judgment SU-163 of 2023).

International Bodies

At present, there are no outstanding cases concerning land restitution processes before the Inter-American Court of Human Rights. Nonetheless, certain attorneys and many victims of the State have contemplated the prospect of collectively presenting their grievances to the Court against the current circumstances and the transgressions perpetrated by the Specialized Land Restitution Tribunal in Cúcuta. This collective action shall be initiated only after having thoroughly exhausted all relevant national channels to safeguard their rights, which have been overlooked by the Colombian State.

The Principle of Good Faith

The proceedings of individuals and public authorities must adhere to the principles of good faith, which shall be presumed in all of their dealings (National Constituent Assembly, Political Constitution of Colombia, Art. 83).

The framers of our constitutional charter aimed to enshrine the principle of good faith at the constitutional level in Article 83. In our legal system, good faith is presumed; therefore, it is understood that the actions of both private individuals and public officials are conducted in good faith and align with the principles of correctness and loyalty to the legal order. The Colombian Civil Code, in Article 769, also establishes this presumption of good faith. The text is cited:

“Good faith is assumed unless the law dictates otherwise.” Congress of the Republic of Colombia, Law 84 of 1873, Article 769.

The Constitutional Court has declared: “Good faith has historically been a fundamental principle of law, encompassing both its active dimension as the obligation to act with loyalty in legal relations and its passive dimension as the entitlement to anticipate similar conduct from others.” Generally, individuals operate in good faith; this is the typical situation. Moreover, engaging in ill faith within a legal partnership fundamentally represents behavior that contravenes the legal order and is subject to consequence. Thus, it is a prevailing principle that good faith is assumed; on one side, it represents typical conduct, while on the other, legal infractions must be substantiated. Breaching good faith constitutes a transgression. Constitutional Court, Ruling C-544/94.

Based on the above, it can be indicated that all actions taken by private individuals and public officials will always be presumed to reflect good faith, as they are deemed to have acted with loyalty and honesty, a principle that is hierarchically established at the constitutional level.

Good faith is categorized as simple good faith and qualified good faith.

Simple Good Faith

Simple good faith is the standard typically required in transactions. It is defined by Article 768 of the Civil Code as the “awareness of having acquired ownership of the thing through legitimate means, free from fraud and any other defect.” The effects of this simple good faith consist of certain protections granted to those who act in this manner. If ‘someone’ acquires something in good faith,

If the acquisition is not protected by law due to the transferor not being the rightful holder of that right or not being authorized to transfer it, the law nonetheless grants certain guarantees or benefits to those who act in good faith, despite the lack of protection for the right that was intended to be acquired.

While such an individual would certainly be disadvantaged in a legal contest, the legal

framework alleviates the repercussions of the forfeiture of the right. Supreme Court of Justice, Civil Chamber, Ruling SC dated June 23, 1958.

“(…) Good faith denotes the belief that one has obtained the thing from an individual possessing the authority to dispose of it, and that there was no fraud or other deficiency in the act or contract. Congress of the Republic of Colombia, Law 84 of 1873, Article 768.

Consequently, simple good faith is the presumption that parties engaged in legal transactions have acted with loyalty and honesty, in compliance with legal requirements.

Qualified Good Faith

Qualified good faith, or good faith without guilt, is a standard that must be demonstrated by the individual claiming it. The Constitutional Court has consistently invoked the principle of guilt-free good faith, asserting its authority to fabricate a legal reality or to recognize a right or condition that did not genuinely exist (Constitutional Court, Judgment C-330/16).

Good faith without guilt necessitates evidence from the individual attempting to file a legal claim about a specific asset. This form of good trust requires two fundamental components for its establishment:

Subjective Element: This entails conducting oneself with loyalty, integrity, and honesty.

Objective Element: This necessitates that, when engaging in the legal transaction, the individual behaved with a degree of assurance derived from acts that prompted them to proceed with confidence and certainty:

To create a legally acceptable situation based on guilt-free good faith, it is essential to demonstrate these factors, particularly the objective component. This entails exercising due diligence and prudence to guarantee the legal assurance that the asset acquired was wholly lawful and obtained from its legitimate owner.

While many of the individuals seeking to assert qualified good faith are humble, often rural and agricultural workers with limited academic backgrounds, their lack of knowledge means they may not always conduct inquiries into the history of the property beyond customary practices.

Jurisprudence acknowledges common error as a source of rights, with the Constitutional Court asserting: “It is recognized that legal consequences supported by the legal order may arise from an erroneous and good-faith belief in the legality of an act” (Constitutional Court, Ruling C-090/95).

In this context, it can be asserted that when an individual has failed to act with diligence or prudence—specifically, when no inquiries were made to ensure certainty and legal assurance—jurisprudence has determined that the principle of common error as a source of rights may be applicable if it arises from the individual’s good faith and appropriate conduct.

“... If the error or mistake is of a nature that any prudent and diligent individual could have made it, due to the evident nature of a right or situation where discerning the

falsehood or nonexistence is impossible, we are necessarily in the presence of what is termed qualified good faith or good faith devoid of all guilt.” Supreme Court of Justice, Civil and Agrarian Chamber, Decision STC8123-2017.

Based on the foregoing, it can be asserted that if it is proven that, despite a lack of diligence, the legal situation would remain unchanged, it indicates that even with any due diligence undertaken, the outcome would have been identical—specifically, that the error would have occurred and the property would have been acquired, that is, the opposing party would have obtained the contested property or be engaged in the process of land restitution.

Parameters for setting the objective elements of good faith exempt from fault in judgments issued by the superior district court, civil chamber specialized in land restitution of Cúcuta, in the acquisition of rural properties in the department of Cesar.

As previously examined, the establishment of the requisite qualified good faith in land restitution actions for opponents requires two elements: one subjective and one objective. The initial component, the subjective part, which pertains to conducting oneself with loyalty, integrity, and honesty. The second aspect, the objective component, necessitates that the participant acted with a sense of confidence in their conduct.

For opponents, rural property owners engaged in land restitution processes and striving to avert the restitution of their properties by establishing good faith without fault have found it challenging to substantiate this claim before the Superior District Court, the chamber specialized in Land Restitution in Cúcuta.

The arguments and evidence submitted by opponents in the reviewed cases, along with the judgments analyzed below, reveal that none of the arguments—despite meeting the subjective and objective elements—have sufficed to prove good faith without guilt and to retain their property rights to the property; this is so even in the absence of any evidence demonstrating bad faith in their actions and without these opponents being responsible for infringing on the plaintiff’s rights.

En In rulings issued by the aforementioned Court from 2020 through September 30, 2022, it became evident that, for the Honorable Magistrates, the demonstration of both elements required to establish good faith without guilt was, in no way, considered

Table 1. Review of Jurisprudence: Superior District Court of Cúcuta - Civil Chamber Specialized in Land Restitution

RECORD	DECISION	
6808131210012016003201 MP: Benjamín de J. Yepes Puerta by 2020	Good faith without guilt is not established. no compensation was granted.	“They were insufficient to corroborate such a standard”.

RECORD	DECISION	
6808131210012016003201 MP: Benjamín de J. Yepes Puerta by 2020	Good faith without guilt is not established. no compensation was granted. No recognition of secondary occupants.	“They were insufficient to corroborate such a standard”.
68081312100120160021001 MP: Amanda Janneth Sánchez Tocora by 2020	State of vulnerability, simple good faith. secondary occupant recognized.	“The opposition was denied, simple good faith was recognized”.
68081312100120170009501 MP: Amanda Janneth Sánchez Tocora by 2020	Good faith without guilt is not recognized. The secondary occupant was not recognized.	“No additional positive actions were proven in any way to establish good faith without guilt.”
6808131200120170003301 MP: Benjamín de J. Yepes Puerta by 2020	Good faith without guilt is not recognized. Secondary occupant status recognized.	“Opposition filed was unsuccessful. The current status of the property remains unchanged.”
68081312100120160012301 MP: Benjamín de J. Yepes Puerta by 2020	Good faith without guilt is not recognized. Secondary occupant status was not recognized.	“Opposition filed was unsuccessful.”
68081312100120170004101 MP: Amanda Janneth Sánchez Tocora. by 2021	Good faith without fault is not recognized. Secondary occupant status recognized	“ Failed to establish the required qualified conduct.”
68081312100120160022001 MP: Nelson Ruiz Hernández by 2021	Good faith without guilt is not recognized. Secondary occupants recognized	Opposition was unsuccessful. The property is maintained in recognition of simple good faith.
68081312100120170000401 MP: Nelson Ruiz Hernández. by: 2021	Good faith without guilt is not recognized. Moderated good faith recognized	Opposition was unsuccessful.

68081312100120150016101 MP: Nelson Ruiz Hernández by: 2021	Opposition declared unsuccessful	Recognizes the status of the secondary occupant
68081312100120160010001 MP: Nelson Ruiz Hernández by: 2021	Good faith without guilt is not recognized. Secondary occupants not recognized.	Opposition was unsuccessful
68081312100120160022801 MP: Nelson Ruiz Hernández. by: 2021	Good faith without guilt is not recognized. Secondary occupants not recognized.	Their allegation is unsuccessful. The opposition declared unsuccessful.
68081312100120170003501 MP: Nelson Ruiz Hernández. by: 2021	Lack of interest in acting by the opponent. The secondary occupant is not recognized.	Opposition was unsuccessful and the recognition of good faith without guilt
68081312100120190013301 MP: Amanda Janneth Sánchez Tocora by: 2021	No compensation is recognized due to the lack of recognition of good faith without fault. The secondary occupant is not recognized.	The opposition does not fail.
6808131200120160015902 MP: Nelson Ruiz Hernández. by: 2021	Good faith without guilt is not recognized. The secondary occupant not recognized	Opposition was unsuccessful
68081312100120160013301 MP: Nelson Ruiz Hernández Año: 2021	The right to land restitution is not recognized	Opposition was unsuccessful
68081312100120180003801 MP: Amanda Janneth Sánchez Tocora. by: 2022	Good faith without fault not recognized. The secondary occupant not recognized	The opposition was declared unsuccessful.

68081312100120200001601

MP: Amanda Janneth Sánchez Tocora.
by 2022Good faith without
guilt is not
recognized.
The secondary
occupant not
recognizedThe opposition was
declared unsuccessful.

In the prior 17 rulings delivered by the Superior District Court of Cúcuta - Civil Chamber Specialized in Land Restitution, regarding rural properties in the department of Cesar, the following outcomes were apparent from the esteemed Magistrates of the Specialized Chamber in Land Restitution.

-In six of the judgments, the opposition was unsuccessful, meaning that good faith without guilt was not recognized; however, simple good faith was acknowledged in a moderated manner.

-In ten of the judgments, the opposition was unsuccessful, and neither simple good faith nor good faith without guilt was recognized.

-In one judgment, the status of the victim did not succeed due to noncompliance with requirements, and good faith without fault was not recognized.

Conclusions

Through the implementation of Law 1448 of 2011, the legislator aimed to offer reparations to victims of the armed conflict while seeking truth, reparation, and non-repetition, thereby providing comprehensive assurances. Nonetheless, this was executed disproportionately, as it failed to include the opponents, who held no criminal or social accountability about the displacement or the use of the land in question to establish a legal link with the property.

Law 1448 of 2011, although pursuing truth, reparation, and non-repetition regarding the armed conflict, has overlooked the rights of opponents, who have likewise been victims of the armed conflict, and their pleas have been disregarded to the extent that the Colombian state, via the decisions of the Specialized Courts or Tribunals for Land Restitution, neglects to acknowledge that opponents frequently comprise individuals with limited education, from modest backgrounds, who have had to endure and participate in the narrative of the armed conflict as victims and not to mention that the Court has placed an undue burden without delineating the criteria for demonstrating the objective elements required to demonstrate good faith without guilt.

It is impermissible to seek to repair victims by imposing the burden on other individuals who become indirect victims of violence and state policies that negatively impact their rights and whose assets were obtained through their savings, which represent their family income and economic endeavors, and they are dispossessed without having instigated or being associated with the acts of violence that resulted in the displacements.

Consequently, based on the outcomes of this research, we can address the formulated problem question in which is underlined that both aspects must be assessed to demonstrate good faith without guilt. The initial component is subjective, mirroring the criterion of simple good faith: to act with loyalty, integrity, and honesty. The second aspect is objectivity, which entails possessing conviction in one's conduct. Nonetheless, there exists an absence of explicit directives concerning the extent and nature of the opponent's investigation required to proceed with assurance.

For opponents, it has been and continues to be an unattainable goal before the examined courts to demonstrate good faith without fault to the Specialized Chamber in Land Restitution of the Superior District Court in Cúcuta. This is due to the court's requirements and lack of clear parameters to establish good faith without guilt, which at times re-victimizes opponents, denying them essential guarantees and fundamental rights, such as due process, by failing to evaluate evidence independently and objectively.

The Court has arbitrarily determined in most cases that the requirements to prove qualified good faith are not met, yet it has not defined the minimum standards of diligence and prudence that an opponent should exercise when purchasing a property and acting with security. Beyond the guidance provided by the Court in previously mentioned case law, no clear framework has been established to measure the objective requirement of qualified good faith.

The Superior District Court of Cúcuta, Specialized Chamber for Land Restitution, has overlooked Constitutional Court jurisprudence, imposing an excessive burden of due diligence on people contesting claimants' demands in land restitution cases, as revealed in the judgments studied in depth, the Court's reasoning to assess the extent of diligence exercised by the opponent to demonstrate good faith without fault includes the following statement: "they sought acknowledgment as a bona fide purchaser predicated on the principle of legitimate trust, having procured the land from a third party and taking into account the inquiries he asserts to have undertaken, in conjunction with the title examination conducted within the framework of the mortgage assessment." This situation does not conform to the legal frameworks that would permit a tempered evaluation of the qualified standard in his favor. Constitutional Court, Ruling C-330/16.

The Magistrates demand an excessive degree of diligence. The Constitutional Court, in Judgment C-327 of 2020, asserts that "this perspective hinders legal transactions and imposes unreasonable and unsustainable burdens on individuals, significantly surpassing the obligations that the legislator can constitutionally impose on private citizens." Constitutional Court, Ruling C-327/2020.

Consequently, an analysis of the judgments and remarks from the Superior District Court of Cúcuta, Specialized Chamber in Land Restitution, reveals that for adversaries—especially concerning legal circumstances in the department of Cesar—has become exceedingly difficult to establish due diligence in property acquisition. The Honorable Magistrates, lacking awareness of the circumstances that would subsequently render these items eligible for reparation, confine their conclusions to asserting that the opponents failed to

exert due diligence in acting securely. Nonetheless, the Court neglects to delineate the requisite amount of due diligence for establishing a legal relationship with the property, overlooking the Constitutional Court's remarks that, as previously noted, underscore that "unreasonable and unsustainable burdens are imposed on individuals."

In a similar vein, the State, via the specialized Land Restitution Courts, in its endeavor to indemnify and compensate victims of the armed conflict, is violating the rights of numerous opponents who were neither involved in the displacement nor profited from it. Many of these modest people have dedicated their lives to agriculture and have been victims of military strife. Currently, numerous individuals persist in facing challenges associated with public order and the existence of illicit organizations involved in criminal and terrorist endeavors. By neglecting to acknowledge their good faith without guilt and any enhancements made, the State is re-victimizing these diligent farmers, agricultural growers, and cattle owners who have devoted their lives to work, sacrifice, and integrity, with the particular aim of enhancing their quality of life, supporting their families, generating employment, and fostering a better society based on legality, integrity, and ethical principles.

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