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PATRIMONIAL RESPONSIBILITY OF THE COLOMBIAN STATE FOR THE JUDICIAL DELAY DURING THE QUARANTINE DUE TO THE COVID-19 PANDEMIC**哥倫比亞政府在新冠肺炎大流行病隔離期間對司法延誤的財產責任**

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Abstract

The research aims to analyze the exercise of jurisdictional power in Colombia during remote work at home conducted by the judicial offices of Cartagena during the COVID-19 quarantine in 2020. This article establishes if the Colombian State is incumbent on any patrimonial responsibility for the judicial delay during the quarantine. This article describes a new method in socio-legal research in Colombia, based on quantitative analysis, which allows determining through the application of surveys to users of the administration of justice that the state activities developed in the branches of the Colombian public power can generate patrimonial responsibility. Using the quantitative analysis of the surveys, the authors illustrate with the proposed method of statistical analysis that the application of surveys allows us to infer that in the administration of justice in Cartagena, 67% have perceived many changes in the notification of procedural stages with the notification application by email, contemplated in Decree 806 of 2020. The evaluation of the new method's efficiency is confirmed by calculating 150 surveys applied to the administration users, and the research results complement studies conducted by other authors in 2020-2021. The novelty and scientific contribution point to applying Cloud Computing using information and communication technology to conduct legal proceedings, and the conclusions pointed to developing new studies on the unjustified delay in compliance with the procedural terms and jurisdictional proceedings.

Keywords: Administration of Justice, Access to Justice, Judicial Delay, COVID-19, Remote Work at Home

摘要 該研究旨在分析卡塔赫納司法辦公室在 2020 年新冠肺炎隔離期間在家遠程工作期間哥倫比亞行使管轄權的情況。本文確定哥倫比亞國家是否對司法延誤承擔任何世襲責任 在檢疫期間。本文介紹了一種基於定量分析的哥倫比亞社會法律研究的新方法，該方法允許通過對司法行政用戶

的調查應用來確定在哥倫比亞公共權力部門開展的國家活動可以產生世襲財產責任。通過對調查進行定量分析，作者用所提出的統計分析方法說明，調查的應用使我們可以推斷，在卡塔赫納的司法行政中，67%的人認為程序階段的通知有很多變化 2020 年第 806 號法令中考慮通過電子郵件通知申請。通過計算適用於管理用戶的 150 項調查確認了對新方法效率的評估，研究結果補充了其他作者在 2020-2021 年進行的研究。新穎性和科學性的貢獻指向應用雲計算利用信息和通信技術進行法律訴訟，結論指向對不正當延遲遵守程序條款和管轄程序進行新的研究。

关键词: 司法行政、訴諸司法、司法延誤、新冠肺炎、在家遠程工作

I. INTRODUCTION

Any state finds in the judiciary, the formality to judge and enforce what has been judged, this is one of its greatest attributes, since [1] "the jurisdictional process is a hetero compositional form in which a third party with powers to impose its decision and state because it is a manifestation of the sovereignty to solve disputes in society." Then the judicial power is exercised through a group of bodies and people, in charge of satisfying the expectations of justice of the citizens, which are structured according to organically within the framework of public administration, in our case, the Colombian one.

This judicial power is, in turn, the administration of justice, which is part of the attributes of the State since it also integrates the three branches of public power, this is how [2] it holds that "a State cannot be conceived, without a judicial body that imposes order in the solution of conflicts between neighbors of a community," which determines that it is the administration of justice that conducts the jurisdictional function in this Latin American country.

To guarantee the effectiveness of the justice systems [3] during the time in which the quarantine was kept at home and then the government authorized the remote work at home of judicial agents, to maintain social distancing and not get infected with the deadly disease called COVID-19 since the almost-automatic response of almost all rulers was the suspension of judicial service in judicial offices and procedural deadlines, with minimal attention for urgent cases [4].

It was then that it was decreed, that the judicial terms be suspended, and the procedural actions be carried out, even if non-working days such as Saturdays, Sundays, and Monday holidays had to be enabled, so that the procedural terms that the litigating lawyers had did not run risks to present in court. Time, their legal arguments, without suffering damage due to delay or delay of justice since legal terms are translated into reasonable terms and unjustified

delay must be avoided. The judicial arrears is a form of the defective functioning of the administration of justice and it is the State's responsibility for its patrimonial compensation based on article 90 of the 1991 Constitution, it is from there that the question that guided the investigation is: Does the Colombian State have any patrimonial responsibility for the judicial delay, during the remote work at the home of the judicial agents due to the quarantine due to the COVID-19 pandemic?

The general objective was to establish whether the Colombian State bears any patrimonial responsibility for the judicial delay during the quarantine due to the COVID-19 pandemic and the specific objectives are to examine the regulations issued on remote work at home by jurisdictional officials during the quarantine by COVID-19 and investigate the use of ICT in judicial processes in times of quarantine due to the COVID-19 pandemic.

In turn, the hypothesis that was built determines that if some judicial offices during remote work at home, when the quarantine by COVID-19 was carried out, did not consider compliance with the procedural terms established in the Colombian procedural regulations and damage was caused to a user of justice, such as the loss of a legal opportunity to enforce their rights, the State must make a financial compensation for the damages caused to the citizen with the delay in the administration of justice.

A. Structure

This study contributes to the understanding of the justice that is administered in the judiciary in Colombia, at a time when, due to the Coronavirus pandemic, judicial officials carried out remote work at home, understanding that the justice system has been characterized since the conquest, the subsequent colonization of New Granada, and its independence from Spain, due to its complexity and breadth, which does not mean a lack of development of this power in the country, but rather, in contrast, shows that society

regularly needs more spaces to resolve conflicts, and with the guarantee of a good quality of methods that solve problems or conflicts between citizens. In line with this, its evolution has not been concluded and, in fact, relevant developments have been produced in relation to important aspects of it, such as, for example, who can exercise the jurisdictional function, is the judge and staff who works in a judicial office, who to take care of their health and life that is also a fundamental right assisted by ICT and Cloud Computing that the Superior Council of the Judiciary acquired, worked remotely at home.

Note that those who give life to the judicial function are the judicial agents, who are human beings who give life to the subjective world of the world of judicial life, and they can be wrong, causing damage to the user of justice, it is for Therefore, this research work is important because it reviews what has happened since March 17, 2020, when the president of Colombia Iván Duque declared the State of Social, Economic and Ecological Emergency because of the public health situation that occurred worldwide, due to COVID-19, as determined by the World Health Organization (WHO) as a pandemic disease.

This is how with Decree 417 of March 17, 2020 and other regulatory decrees, an attempt is made to mitigate the social impact, which the situation of preventive quarantine presented in order not to contract the Coronavirus, which per se was being created in the daily life of Colombians, uncertainty about how, for example, access to justice would be carried out; this is how Decree 806 of 2020 is issued, which guarantees users access to justice by using ICTs and decreed remote work in the house of judicial officials, guaranteeing access to justice and preserving the lives of legal operators [6].

B. Problem Statement: Some Historical Notes on the Judiciary in Colombia

The problem being investigated is that what is now the Republic of Colombia, inherited from the war of independence from Spain, the social conflicts that the Creoles (children of Spaniards born in America) did not learn to settle by talking, but through the wars and political confrontations, which is why historiography states that since 1810, the year in which the new independent regimes chose a new way of governing themselves, finding in the liberal republic a democratic model to administer the State and society, while many civil wars were fought for control of political power.

The Spanish Empire was also in crisis since

King Ferdinand VII was captured by the French in 1808, when Napoleon's troops invaded the Iberian Peninsula, which created government juntas by the Spanish resistance, to govern in the absence of his majesty, and the first republic from 1811 to 1816 was promoted, ending this attempt to consolidate democracy, with a battle between General Francisco de Paula Santander and General Simón Bolívar, against absolutism, an old claim was reconsidered: enjoy the same privileges as the Spanish, in their kingdoms of the Indies.

It is then believed to begin with the era of change, thinking of the second republic from 1819 to 1830, and it is that the contrast of the Colombian population today is shown by the Political Constitution of 1991, when in article 7, it states that Colombia is a multi-ethnic country, because the indigenous ethnic group that owned the territory of what was then New Granada was added to the white Caucasian ethnic group of the Spanish conquistador, who worked with the enslaved black Africans and these ethnic mixtures result in how multicultural the population of the XX and XXI century this Latin American republic.

If we add to this the fact that in 1900, when such concepts as citizenship began to be established, which generates rights and the forms of government and the elaboration of the law, under a policy that has a democratic model in the social State of law, but that it lacks political unity, between the parties and the new Colombian nation, since there is no communion in beliefs, not a single institutionality.

The Colombian conflict then generate; this really begins with the withdrawal of the Spaniards from New Granada and in the 19th century, the time when Panama separated, forming a new nation and even when President Rafael Núñez sought regeneration-idea policies that are embodied in the Constitution of 1886 – ending federalism, avoiding anarchy, thus structuring what is today the Republic of Colombia with administrative decentralization.

The Magna Carta of 1886 politically organized the new Latin American Republic, but socially a conflict began to demand the agrarian rights of peasants, who had no land to work while the landowner owned large tracts of uncultivated land and in 1948. With the assassination of Jorge Eliecer Gaitán, who aspired to be President of the Republic under the political flags of the Liberal Party, a war with the Conservatives was generated, thus initiating the political violence of the 20th century, which later took shape in an armed conflict that linked armed actors in the war

scene, such as the guerrillas (ELN, EPL, FARC-EP) and the paramilitaries (United Self-Defense Forces of Colombia) that at the end of the 20th century and the beginning of the 21st century required going to justice restorative, for dialogue, open spaces for peace and reconciliation of Colombians.

The last of these agreements is the one in Havana (Cuba) that got the government of Juan Manuel Santos and Rodrigo Londoño Echeverry, Alias Timoshenko, the top leader of the FARC-EP, to agree to the search for a stable and lasting peace; and as observed in this narrative, the conflict between Colombians is a phenomenon that appears naturally in the construction of their society after independence from Spain, and the search for an egalitarian corporate model has been a historical constant. to this day, as a social fact consubstantial to life in society, so that disputes between citizens are a historical variable, in the daily life of Colombians in all times and societies from the conquest, colonization and independence until the present day.

Within what has been described, it cannot be asserted that Colombia is a conflictive nation par excellence, what is wanted to be shown in this document is that it has sought to overcome, through conversations, and in a friendly arrangement, its levels of national conflict, particularly and for this it has made use of restorative justice and alternative conflict resolution mechanisms, such as Conciliation.

In this sense, and in the case of Colombia starting from the French Revolution, various bodies exercised the Judicial Power [7], as it has been presented in the history of the Judicial Branch, where it is stated that "After of the political independence of New Granada from Spain, which had incorporated several bodies at the judicial level such as the Royal Court and the civil and criminal (criminal) judges, in the political constitutions that were issued (1821, 1830, 1832, 1843, 1853, 1858, 1863, and 1886), it was necessary to address this issue" [8].

Note that in relation to the design of the structure of the administration of justice, hierarchies were established in terms of the different judicial bodies and the judges that compose them and requirements were demanded to access the highest positions, and the Republic went from being divided into judicial districts in which the courts acted and its members had to meet certain requirements: "a) Be a citizen of Granada; b) Be a lawyer; c) Having been a first instance judge or assessor for three years or having practiced the profession for four years" [8].

The development and evolution of the new independent republics in Latin America gave rise, in many of them, to changes in their conformation and structure, also in relation to the administration of justice. In the specific case of Colombia, note that, for the federal period, between 1858 and 1886, the way of administering justice was modified: "In the Federal Constitution of 1863, the country is renamed the United States of Colombia, it is organized the Judiciary around the Senate, the Federal Supreme Court, the courts, and the courts" [8]

However, finally, and upon returning to centralism, the Constitution of 1886 was promulgated, which was in force until 1991, and in which the judicial power was organized as follows: "Title XV... - I. Supreme Court of justice... II. Superior District Courts... III. Lower courts... IV. Miscellaneous provisions regarding Judges and Magistrates. V. General rules: Authorization to establish the Jury for criminal cases; commercial courts; contentious-administrative" [8].

Additionally, in said Constitution, regarding the judicial power, "the name of the Supreme Court was preserved for the highest court in the administration of justice," as well as it was committed to "observing also the life character given to the magistrates of the court and of the superior courts and the authorization to the legislator to establish the contentious-administrative jurisdiction." To simplify, it could be said that the judicial offer was structured in such a way that access to it was guaranteed [9].

II. METHOD

Methodologically, this is a quantitative socio-legal research that "has a set of epistemological assumptions and methodological instruments that must be used to review the effectiveness of Law, based on a factual conception of it"; it "has positivism as its epistemological approach and develops it through the collection of quantitative data after the application of 150 surveys that provide objective information on the reality of the object under examination" [5].

The method of this research is statistical analysis, and as a secondary source, the survey was used to collect first-hand information, which allowed for the quantitative analysis of the subject explored.

III. RESULTS

In this item, each category of analysis are unrolled, which were established as conceptual parameters in the specific objectives of the

research, and which resulted from the process of collecting information on the subject investigated in bibliographic records and then proceeding to conduct analysis of texts and interpret hermeneutically.

A. Rules Issued to Regulate the Remote Work at Home of Judicial Officials

To minimize the harmful effects on the health of Colombian state workers, such as legal operators working in the judicial branch, despite the pandemic caused by COVID-19, the Ministry of Health and Social Protection and the Administrative Department of the Public Function, with the Ministry of Labor, issued Circular 018 of March 10, 2020, to apply the guidelines drawn up by the State in terms of work environments, in public sector entities, such as judicial offices during the COVID-19 Quarantine.

These guidelines based the quarantine at home, seeking the promotion, prevention, and containment of the first epidemiological peak of respiratory diseases and COVID-19 and other associated pathologies, which were applied exceptionally and temporarily in accordance with the concepts issued by the world health authorities like the WHO.

The work environments changed since, from being in the judicial offices, all the assembled personnel: Judge, secretary, clerk, senior officer, and subpoena, began to telework or better known as remote work from home, as an exceptional measure, occasional and temporary to contain the COVID-19. To achieve the above, the employers, by mutual agreement, set the activities that their workers could conduct from home, using ICTs. These guidelines sought to contain the COVID-19, by reducing the exposure of workers to contract this deadly disease, by reducing the concentration of workers in their jobs.

B. COVID-19

COVID-19 is a result of a mutant strain of coronavirus SARS-CoV-2, which began in China at the end of December 2019, in Hubei province (city, Wuhan), where the first group of 27 is reported cases of pneumonia of unknown etiology, with seven serious patients; this is how a new coronavirus (nCoV) is identified as a possible etiology [10]

By January 24 in China [11], 835 cases had already been reported (534 from Hubei) and over the weeks it spread to Thailand, on January 19 in South Korea and then in many countries around the world, due to which [12] since March 2020 is a new global pandemic. In China, the origin of the virus is still unknown, although it is attributed

to the pangolin, a mammal used for food [13].

The COVID-19 virus was identified and genetically sequenced [14] It is related to other coronaviruses that circulate among bats (including the SARS coronavirus; therefore, so its most likely natural reservoir is these flying mammals. The intermediate host, probably another mammal, has not yet been identified. The point of contact with humans could have been a live animal market in Wuhan, now closed.

1) Teleworking

Teleworking in Colombia is defined in Law 1221 of 2008, and is considered a form of labor organization, which lies in the performance of paid activities or provision of services to third parties, using information and communication technologies as labor support (TIC) to maintain contact between the parties (employer and worker) and to be able to perform the functions without requiring the physical presence of the worker at a specific site of the company.

Teleworking or "Telework" is a work contract [15] that arises in the United States, and the ILO convention on teleworking, which in Colombia is regulated by Law 1221 of 2008, accepted it. In other legislations, the labor or civil law protects this since both regulations allow it. However, the labor law exclusively regulates it in the Colombian legal system since teleworkers are creditors of all guarantees provided by the labor contract, as well as the benefits social and parafiscal and as the test of Colombian workers.

2) Remote Work at Home

Remote work at home arose because the Colombian President at that time, Iván Duque, based on article 215 of the 1991 Constitution, which consecrates the State of Emergency to counteract events that "seriously disturb or threaten to disturb and imminent the economic, social, and ecological order of the country, or that constitute a serious public calamity," dictates Decree 417 of 2020 by using which the State of Economic Emergency was declared, temporarily protected by the legislative powers, destined exclusively to solve the public health crisis caused by the pandemic and mitigate its effects.

Reinforced the previous legislative process, in the hands of the President of the Republic, by Statutory Law 137 of 1994, in charge of regulating states of exception, which in its article 50 establishes that, in no case through legislative decrees issued during the States of Economic, social and Ecological Emergency, the Government may deteriorate the social rights of workers, hence, with the support of the Ministry of Labor, it focused its efforts on the protection of work and on guaranteeing the conditions for it,

through the Circular 21 of 2020, through which I urge employers in the country to use a series of mechanisms to guarantee the job stability of the Colombians, among which is the use of the modalities of work at home and telework [16].

In times of the quarantine that occurred in 2020 due to the Coronavirus pandemic, productivity, the economy, and work were affected in Colombia since this new coronavirus had a rapid spread, making it a highly contagious disease, for which it affected a significant part of the workforce, and governments sent people to do remote work at home and many people have confused it with telecommuting.

Although ICTs are used in remote work at home and in teleworking for developing work activities, it must be considered that remote work at home is a transitory measure of promotion, prevention, and containment of epidemiological peaks of the respiratory disease known as COVID-19 and other associated pathologies, which the Colombian government applies in an exceptional and transitory manner following the concepts issued by world health authorities such as the WHO, Law 2088 of May 12, 2021, regulated it. On the other hand, Law 1221 of 2008 regulated teleworking, and from this regulatory moment, it was considered a permanent work activity in Colombian companies.

C. Use of ICT in Judicial Processes during Remote Work at Home

In the explanatory statement of Legislative Decree number 564 of 2020, by which measures are adopted to guarantee the rights of users of the justice system, within the framework of the State of Economic, Social and Ecological Emergency, we find that the National Government to preserve the health and life of Colombians, issues Decree 457 of March 22, 2020, with which it gave instructions for the maintenance of public order for which it ordered the mandatory preventive isolation of all inhabitants of the Republic of Colombia, starting at a zero hour (00:00 a.m.) on March 25, 2020, within the framework of the health emergency due to the Coronavirus or COVID-19, quarantines that were extended until the month September 2020.

And within the framework of the health emergency caused by the Coronavirus, I advocate the mandatory preventive isolation of all inhabitants of the Republic of Colombia, including those public servants and contractors whose activities are strictly necessary to guarantee the operation of essential services. of the State, therefore, based on article 250 of the

Political Constitution, it establishes that the Office of the Attorney General of the Nation has to advance the exercise of criminal action and conduct the investigation of the facts that have the characteristics of a crime that come to its attention, and states that the national government may not abolish or modify the bodies or the basic functions of prosecution and prosecution.

Also, based on Article 1 of Decree 2591 of 1991, the Colombian State provides that "The protection action will proceed even under those of exception and its content may at least be defended without prejudice to the limitations, without prejudice to the limitations that the Constitution authorizes and what is stated on the matter by the corresponding statutory law of states of exception." Also, based on article 15 of Law 371 of 1994, in accordance with articles 215 and of the Political Constitution, prohibits during states of exception, a) Suspend human rights or fundamental freedom; b) Interrupt the normal functioning of the branches of public power or State bodies; and c) Abolish or modify the bodies or the basic functions of prosecution and prosecution.

With the Agreement PCSJA2011517 of March 15, 2020, of the Superior Council of the Judiciary, the Ministry of Justice suspended the judicial terms throughout the country, except in the judicial offices that fulfilled the function of guaranteed control and the knowledge criminal offices that had scheduled hearings with a person deprived of liberty, arguing that said hearings could be held virtually. It also provided that the magistrates and heads of administrative units will coordinate and give instructions so that the servers under their charge will work from their homes. E. Use of ICT in judicial processes, during remote work at home by justice administration officials, at the time of the COVID-19 pandemic.

In the explanatory statement of Legislative Decree number 564 of 2020, by which measures are adopted to guarantee the rights of users of the justice system within the framework of the State of Economic, Social, and Ecological Emergency, we find that the National Government to preserve the health and life of Colombians issues Decree 457 of March 22, 2020, with which it gave instructions for the maintenance of public order for which it ordered the mandatory preventive isolation of all inhabitants of the Republic of Colombia, starting at a zero hour (00:00 a.m.) on March 25, 2020, within the framework of the health emergency due to the Coronavirus or COVID-19, quarantines were extended until September 2020.

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Likewise, the honorable Constitutional Court, taking into account the aforementioned decisions of the Superior Judicial Council, through Agreement 01 of March 19, 2020, modified articles 6, 31, 35, 36, 60 and 101 of the 2015 Agreement, Regulation of the Constitutional Court, enabling the sessions of the Chambers and the adoption of decisions through technological tools that guarantee deliberation, confidentiality, privacy, security, reservation and simultaneous communication of the draft orders, agreements or decisions, which emanated from these judicial

offices; and a series of decrees [17] were issued in order to mitigate the social impact, including 806 of 2020, to guarantee users access to justice through different information technologies and, in turn, , expedite judicial processes and actions with the aim of guaranteeing the right to the administration of justice and due process.

The trial lawyers try to understand through this legal discourse, the drastic change that the COVID-19 pandemic caused by the Coronavirus virus has suffered the daily life of the judicial branch in the city of Cartagena in Colombia, since March 17 of 2020, and in the various moments of time in which several mandatory quarantines were experienced at home for all Colombian citizens, including judicial officials, a situation that caused the judicial terms to be suspended, since Decree 491 of 2020 established that "State entities took the necessary measures to provide technological means to public servants and service provision contractors so that they can conduct their functions and activities working from home."

Once the quarantines were overcome on August 31, 2020, and on September 1, even avoiding catching such a deadly virus, the judicial branch continued to work at home, a situation that was later regulated with Law 2088 of 2021, holding virtual hearings, notifications by emails and other types of activities that Information and Communication Technologies allow, through the use of Cloud Computing, a situation that, although it has allowed the protection of the fundamental right to life and health, has caused trauma to the right to access to justify it without delay, because in some territories there has been an almost total break between users who do not have the ability to approach the courts and those who do not have the tools to receive justice demands adequately [18].

With Decree No. 469 of March 23, 2020, some measures were issued to guarantee the continuity of the functions of the constitutional jurisdiction, within the framework of the State of Economic, Social and Ecological Emergency and with Circular 19 of March 2020 of the Ministry of Justice, measures were taken to prohibit the entry of visitors to the building, home work authorization; reduction of face-to-face meetings; and suspension of face-to-face attention to citizens, directed at officials, contractors, and executives of the administration of justice in Colombia. Likewise, Decree 564 of April 15, 2020 adopted measures to guarantee the rights of users of the justice system, within the framework of the State of Economic, Social and Ecological

Emergency together with Decree 806 of June 4, 2020 that adopted measures to implement information and communication technologies in judicial proceedings. Likewise, the honorable Constitutional Court, taking into account the aforementioned decisions of the Superior Judicial Council, through Agreement 01 of March 19, 2020, modified articles 6, 31, 35, 36, 60 and 101 of the 2015 Agreement, Regulation of the Constitutional Court, enabling the sessions of the Chambers and the adoption of decisions through technological tools that guarantee deliberation, confidentiality, privacy, security, reservation and simultaneous communication of the draft orders, agreements or decisions, which emanated from these judicial offices; and a series of decrees [17] were issued in order to mitigate the social impact, including 806 of 2020, to guarantee users access to justice through different information technologies and, in turn, expedite judicial processes and actions with the aim of guaranteeing the right to the administration of justice and due process.

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D. Analysis of the Statistical Survey Applied to the Users of Justice in Cartagena

The respondents, users of the Cartagena justice administration, have perceived many changes in the notification of the procedural stages with the application of notification by email, contemplated in decree 806 of 2020; by 67%. They also said that 73% have had problems with the new, virtual way of filing lawsuits, and that communication with officials of the judicial branch has not been easy, since the implementation of Decree 806 of 2020 by 77%.

They also said that they have had some problems as users of the justice administration system, during the 53% suspension of judicial terms, and they state that the procedure for prior consultation was defined through a pre-consultation and/or post-consultation process – 60% consultative in common agreement with the affected communities and other groups. They also consider that virtual hearings provide guarantees to the judicial process by 70% and that they have experienced some inconvenience during a virtual hearing, for example, the power has gone out or the internet service has dropped by 47%.

They also assume that it has been easy to organize the digital file by 71% and that they consider that the judicial operator responds immediately to the concerns of users in pandemic times by 72%, for which they consider that virtual work has allowed the administration of justice to continue operating regularly by 68%.

IV. DISCUSSION

It is important to recall the background on the

patrimonial responsibility of the Colombian state, and within these, we find that [19] until the Political Constitution of 1991, no constitutional or regulatory provision accounted for the State's reparatory obligation; since the jurisprudence of the Council of State was the source that nurtured its progressive evolution based on civil law, beginning to state the responsibility of the State, from the following concepts.

1. The indirect responsibility of the State: It is the one that arises from the facts and indirect actions of state agents, that is, the State responds to the damage that its judicial official causes indirectly to the user of justice, for example, by a prevaricated by omission.

2. The direct responsibility of the State: It is the one that arises due to the direct fault of state agents, especially when the judge denies justice directly, due to prevarication by action.

3. The failure of the service: Occurs when damage is caused to the user of justice, for providing the service in a deficient or irregular manner and must be repaired. In this theory, it does not matter whether the agent was at fault; the failure in the provision of the service by the State is enough because the administration of justice is a public service, which must be provided efficiently.

Subsequently, in 1991, it is the norm of norms of that annuity, which was introduced into the Colombian legal system for the first time, the constitutional foundation of the patrimonial responsibility of the State, since the norm of norms expressly has been recognizing the patrimonial responsibility of the State, in Article 90, which states "The State will respond patrimonially for the unlawful damages attributable to it caused by the action or omission of the authorities." This article is the foundation of all forms of State liability, whether it is contractual or non-contractual liability. With this background of the responsibility of the state, let us see the rules and jurisprudence that regulate the Patrimonial Responsibility of the State for the defective functioning of justice in Colombia.

Given the background of the patrimonial responsibility of the State in Colombia, we will see that at a legal level, the patrimonial responsibility of the Colombian state for the delay in the administration of justice is based on the Political Constitution that, in addition to article 90, in which it consecrates the responsibility of the state, the rights to due process (art. 29) and access to the administration of justice (art. 229) are also established in the Magna Carta to ensure the effectiveness of the aforementioned rights when accessing justice

These articles are consistent with Law 270 of 1996 or the Statutory Law of the Administration of Justice in Colombia, in which the patrimonial responsibility of the State for the actions of the judicial apparatus is framed, which remained, with the notion of failure of the judicial service, defined in articles 65 to 69 of the standard in question. Likewise, this Law recognized speed (art. 4), efficiency (art. 7), and respect for the rights of those involved in the process, as guiding principles of the administration of justice, in accordance with the above, article 228 of the upper text provides that: "The terms will be observed diligently and non-compliance will be sanctioned," and article 42 of the General Code of Process, refers to the obligations of the judge, which are: "To be the director of the process, provide a prompt and effective solution to justice, avoid paralyzing the administration of justice, as well as delaying the process."

Article 18 of Law 446 of 1998 establishes that the judicial authorities must dictate the sentences in the same order in which the files enter the office for that purpose, without this order being able to be altered, except for a few exceptions expressly defined by the law that is in cases of early judgment or legal priority.

At the jurisprudential level, it was already delimited that it was the jurisprudential doctrine of the Council of State, which determined the concept of Patrimonial Responsibility of the State before the primary constituent in 1991, enshrined in the Constitutional Charter of that same year article 90, which normatively regulates this responsibility in the State, but as the subject that is addressed is the patrimonial responsibility of the State for the defective functioning of the administration of justice, let us see what the Constitutional Court says regarding judicial delay, in Sentence T-945 A of 1998, regarding the need to resort to the analysis, on how reasonable the judicial term should be to verify the "unjustified" nature of the breach of the procedural terms for:

- Failure to comply with the terms indicated in the law to advance action by the competent official;
- That the delay goes beyond the concept of a reasonable term that involves the analysis of the complexity of the matter, the procedural activity of the interested party, the conduct of the competent authority, and the global analysis of the procedure;
- The lack of reason or reasonable justification for the delay.

The Constitutional Court, in Judgment T-297 of 2006, reaffirmed "its analysis criteria, which make it possible to identify when justified

judicial delay may seriously jeopardize the fundamental rights of users of the administration of justice."

In Ruling T-803 of 2012, on the right of access to the administration of justice and due process, this corporation has defined judicial delay as "a multi-causal phenomenon, often structural, that prevents the effective enjoyment of the right of access to the administration of justice," and which is presented as "the result of structural procedural accumulations that exceed the human capacity of the officials in charge of solving the processes."

This document is oriented to determine the responsibility, which generates the obligation to repair the unlawful damages caused by the Colombian State for the exercise of the jurisdictional function, especially during the quarantine due to the Coronavirus pandemic, since this element is that distinguishes it from the responsibility for the legislative and administrative functions. According to what is established in article 65 of Law 270 of 1992 or the Statutory Law of the administration of justice, this type of responsibility has three sources, and they are:

1. Jurisdictional error. Regarding this source that originates the responsibility of the State for the judicial function [20] says that "the treatment given in Colombia to the non-contractual responsibility of the State due to jurisdictional error has been merely jurisprudential since there was no norm that regulated said responsibility," since as explained above, it is the Political Constitution of 1991, which in its article 90 establishes the patrimonial responsibility of the State;

2. Unjust deprivation of liberty. It is noted that "the issue of State Responsibility for the Unjust Deprivation of Liberty is a novel concept in Colombia, but developed by the Jurisprudence of the High Court of Administrative Litigation, and by national and international doctrine" [21] that although under the protection of the Political Constitution of 1886, it had a wide jurisprudential development, studies such as these must still be conducted, which allow us to go deeper into the subject investigated;

3. Defective functioning of the administration of justice. Regarding this other source of the responsibility of the State for the judicial function [22], it is found that "the normative update made to the superior norm in the year 1991, gave special importance to the principles of speed and effectiveness, since it established them in the system as higher category mandates, which simultaneously act as guarantees aimed at

achieving real and effective compliance with due process – applicable to all judicial processes – and the right of the accused to be tried without undue delay" since it is nourished the daily experience on the cases in which unlawful damages have been caused to the users of the administration of justice, by the action or the omission of the judicial authorities, which the State has the duty to repair.

Although the national government has issued Decree 806 of June 4, 2020, with which it implements the use of information and communication technologies in judicial proceedings and guarantees to expedite the processing of processes before the ordinary jurisdiction in all specialties, it is understood that the virtualization of justice is materializing, which has been demanded for a long time, but that it was in the midst of the COVID-19 pandemic, which became more evident, but that remains paralyzed by 50% of the administration of justice in Colombia because many users in the national territory do not have access to the internet, or do not know how to use technological applications.

V. CONCLUSION

1. As the main findings of this investigation on the patrimonial responsibility, which is the responsibility of the Colombian state due to the delay in the administration of justice during the COVID-19 pandemic, it is observed that judicial changes have been made in the notification of the procedural stages with the application of notification by email, for example, which was contemplated in Decree 806 of 2020.

2. Compared with other studies, we found that [23] stated that having declared a state of emergency, due to the COVID-19 pandemic, affected the validity of contractual relationships because extraordinary, unpredictable, and irresistible events affected them that prevented compliance with benefits, a situation that can lead a party to require the judge to terminate the contract.

It is also argued [24] that the current situation worldwide, caused by COVID-19 and its rapid spread, exposes the lack of decision-making precedents to deal with situations created in the daily legal framework.

3. The implications of the study determine that the COVID-19 has certainly produced the viability of holding online trials, public hearings and depositions by videoconference, accompanied by a remote procedural management carried out at home by judicial officials, the implementation of so many changes

in a way Hasty and with such a high degree of improvisation puts the Superior Council of the Judiciary to the test and highlights unquestionable advantages in the administration of justice in terms of ease, accessibility, speed and savings in many trips.

Certainly the pandemic streamlined the digitalization that had been gradually implemented in the courts of the city of Cartagena (Colombia), a technological situation that can facilitate the internal administrative and document management work of the judicial office, so that the clerk or the senior officer can carry out the ordering of files, control of deadlines, reception of information and the subpoena carry out the issuance of notifications by email, among other procedural acts that take place in a court; but there are tasks that are still carried out by people who have different roles, such as the judge or the secretary who need to be able to communicate securely, provide traceability to the proceedings or write and sign documents that are being filed in the cloud.

4. As strength we find in this investigation, that these are judicial actions that becoming daily since their practice is observed in normal times when accessing the judicial offices of the city and that they solve the various needs of the administration of justice, which They require technological responses, which with the support of ICTs must close the digital gap throughout the Colombian territory so that users of justice can access judicial offices.

As limitations, it is determined that today the COVID-19 pandemic has expedited the digitization of the Colombian courts, but it is also true that the relationship with the parties could not be covered by one hundred percent, and this means being able to follow the status of the process, receive the information safely, in a timely manner, from the office or be able to review the file.

This supposes meeting needs, such as verifying the identity of the parties by the offender, an event that can harm the user of justice with its facts, with its acts or with its omissions, which without having a content of a judicial decision has a purpose in the jurisdictional function, since its raison to be found in the existence of a process that is processed in a judicial office. Therefore, a defective functioning of the administration of justice may occur due to not guaranteeing the information correctly. This can be accessed by persons not legitimized in the legal case, and it can even be modified or it can happen that the communications are not effectively received and

processed by the firm.

5. It is recommended to continue doing this type of socio-legal inquiry, so that, in future pandemic crises, the experiences lived in the legal world, with COVID-19, can be used.

6. As strength we find in this investigation that these are judicial actions that becoming daily since their practice is observed in normal times when accessing the judicial offices of the city and that they solve the various needs of the administration of justice, which They require technological responses, which with the support of ICTs must close the digital gap throughout the Colombian territory so that users of justice can access judicial offices.

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