ISSN:1692-8156

EDITORIAL

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International Law has dedicated fundamental spaces to the discussion of transitional justice, and particularly, to the progress and difficulties it faces with regards to the national prosecution of international crimes. Murders against protected persons, forced displacement and the illegal recruitment of children have taken pages of this journal. This editorial retakes on the topic, this time to review key aspects of the current situation. Specifically, the value and importance of the prioritization strategy undertaken by the Office of the Attorney General of Colombia, which should gradually compromise the work of all judicial officers. The strategy has resulted in the issuance of Directive 001 of 2012, by the Attorney General; its settings and background are accounted for, in the text entitled *Prioritization: proceedings of the workshops for the construction of the criteria for the new system of criminal investigation.* (In Spanish, La priorización: memorias de los talleres para la construcción de los criterios

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del nuevo sistema de investigación penal). Both documents are published on the website of the prosecuting body[1].

It is also a comprehensive strategy within the Office of the Attorney General, which is centrally linked to all the reform process undertaken and supported by the decrees issued in January 2014. The strategy undoubtedly sets the most ambitious reform that has been introduced to the prosecuting body since its establishment in 1991. It is also a strategy that has begun in a general way against the various forms of organized crime, although the birth and origin of this strategy, as it is documented in the aforementioned reports, has been the domestic criminal prosecution of international crimes. It constitutes essentially a paradigm shift that affects the work of the entire Office: proposing a strategy of not investigating isolated facts and individual subjects but rather investigating criminal structures; it is about developing criminal contexts, investigating the basis of these contexts, connecting facts in appearance isolated and analyzing the evidence in relation to such contexts.

This has certainly not been a peaceful issue. While there is now a consensus around the need to prioritize, it was not always so; there are some sectors in which the discussion persists with regards to the possible impunity that prorization of cases may lead to. However, by no means this is the case; on the contrary, it seeks to advance, produce results and not to bury social expectations about the truth of the committed crimes. Of course, it faces and will face great problems and challenges, but it is not a strategy designed to generate impunity. It is tantamount that the legal community strengthens it and gives it meaning. In any case, besides being a strategy that is in progress, it is incorporated explicitly in the Legal Framework for Peace, Legislative Act 001 of 2012, whose Article 1 creates a transitory Article 66

1 The policy is located at the following address: http://www.fiscalia.gov.co/colombia/wp-content/uploads/2013/02/Directiva001.pdf (October 4, 2012). Meanwhile, reports are available in the following address: http://www.fiscalia.gov.co/colombia/wp-content/uploads/123719-Libro-de-priorizaci%C3%B3n-web.pdf (August, 2012).

to the Constitution, recently declared as constitutional by the Constitutional Court in the ruling C-579 of August 28th 2013.

With regards to these origins, it may be relevant to account a fact that the author of this editorial went through in the early implementation of the Law 975 of 2005, also called the Justice and Peace Law. At that time, as the director of the area of Justice for an international observatory which monitors the implementation of the statute previously referred to, a prosecutor said: *"I have a drama that is not only professional but also spiritual; I have a hundred documented cases and 20 cases that, after lots of effort, over two years, are illustrated, structured and informed, what should I do? Can I go with 20 cases or should I wait years and years to document the 80 that I still lack? "*Then he added: *"More than the actual pressure of the institution to produce results, it is the one that comes from victims. On the one hand, victims of the aforementioned cases push me forward; on the other hand, the victims of the cases that have not yet shown results, pressure me to investigate in detail their individual cases".*

The discussion became complex and any decision about a possible solution was marked by the ignorance on the meaning of prioritization, or because it is misunderstood as a synonym of impunity. An initial solution was the implementation of the so-called *"partial charges"* which offered an initial success , but did not provide substantive solutions. Thus, based on the principle of reality, given the impossibility of the criminal justice system to provide immediate and adequate responses and even less, prioritize on the massive, continuous and extensive commission of international crimes; -referencing the same principle, as Nicklas Luhman has the legal system must *"learn"* and not insist on contradicting the factual and normative realities- The Office of the Attorney General launched an institutional transformation and, above all, a mental and cultural change, on the basis of the strategy of prioritization. The strategy seeks, a rational and coordinated implementation of subjective objective and complementary criteria, appropriate to each case and case groups, to move forward, to respond to the victims, to find macro

truths; thereby contributing to the truth that will the possible reconciliation and non-repetition state policies.

At the same time, however, around this strategy, new languages are created that are fundamental for domestic criminal law, international criminal law, international human rights law and International humanitarian law, issues that are at the center of this journal; starting today it is necessary to talk about the most senior figure, their relationships with superiors in criminal structures of national origin or outside the law; forms of imputing liability to those responsible for perpetration of crimes-structures or organized apparatus of power-determination or induction, authorship, etc. The new language refers to the direct or indirect victims, to the severity, representation criteria. Thus, criminal law and its dogma are faced with new dilemmas, all essential in this new normative and jurisprudential framework and; in particular, of language and concepts. The law becomes more complex in general and permeates all social and political dimensions.

The Framework for Peace, in fact, reflects this new language and introduces a concept even more complex: selectivity. This concept, with a more political nature, if you will, is more a jurisdictional threshold, which, based on criteria that matches prioritization but whose factors give content and can be diverse, define which cases and which authors enter the criminal system.

On the relations between selectivity and prioritization, and on the stage of implementing of the Framework for Peace, everything is to be done. Also and mainly, it is to define who selects, how to select and how prioritization will be harmonized. In any case, the selection will have a priority subject: the head; additionally, as required by the context, it must rely necessarily on the criteria of gravity and representation, central to the construction of cases that can authentically fulfill social expectations of national prosecution of international crimes.

These are open questions. Today we are in full discussion of these as we go forward with the debate about possible alternatives, extrajudicial sanctions and *ad hoc* value and function, as

part of negotiations to the end of the armed conflict, the political offense. Also, just as dogmatic figures were revised based on these requirements, also the functions of the penalty, the prison model, the function itself of the criminal system as a mechanism for *"possible overcoming of a troubled past"* are reviewed. It is, in the old notion, in German voice, now renovated and called into question, of *"Vegangenheitsbewältigung"*.

Our journal will closely look at this great discussion and support it with illustrated contributions which unravel in the tangle of misconceptions and discussions politicized and manipulated the most authentic values that the university and the legal community generally regard as the most positive, for the implementation of more complex mechanisms as our own heterodox and rich in challenges reality is more complex as well.