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RESTORATIVE JUSTICE IN LAW 2452 OF APRIL 2, 2025: TOWARDS COMPREHENSIVE REPARATION IN THE COLOMBIAN LABOR PROCESS

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SUMMARY

This article analyzes the incorporation of the restorative justice approach in the Colombian labor process since the issuance of Law 2452 of April 2, 2025, which adopts the new Procedural Code of Labor and Social Security. It examines the doctrinal and jurisprudential evolution of reparation in Colombian Labor Law, as well as the influence of international human rights law, particularly the Inter-American System, in the construction of a comprehensive reparation model, as it is a model for all regional systems. Based on the analysis of the jurisprudence of the Supreme Court of Justice and the Constitutional Court, as well as the specialized literature on labor law, sociology of work and restorative justice, it is argued that the labor conflict cannot be understood only as a property dispute, but as a situation that can profoundly affect dignity, the identity and life project of workers. In this context, restorative justice emerges as an approach that complements traditional economic reparations through measures aimed at rebuilding labor relations, rehabilitating victims, and preventing future violations, but beyond that, the objective is to rebuild ourselves as a society, where social disaffiliation is overcome and work is once again the unifying element.

KEYWORDS: Restorative Justice, Labor Law, Comprehensive Reparation, Human Rights, Colombian Labor Process.

1. INTRODUCTION

Labor Law has historically emerged as a normative response to the structural inequality between workers and employers. Since its origins, this branch of law has had the purpose of balancing a legal relationship characterized by economic and power asymmetry between the parties to the employment contract. In this sense, Labour Law is not limited to regulating the conditions of service provision, but constitutes an instrument for the protection of human dignity in the productive sphere.

As Alain Supit explains, labour law is configured as a legal system aimed at "civilising the labour market by introducing legal limits to economic power" (Supiot, 2001). In a similar vein, Mario de la Cueva argues that labor law represents the legal expression of social justice applied to productive relations, insofar as it seeks to correct the structural inequalities inherent in the economic system (De la Cueva, 1972).

Likewise, Manuel Carlos Palomeque López points out that labor law constitutes a legal system aimed at guaranteeing social balance within the company, through the protection of the structurally weakest part of the labor relationship (Palomeque López, 2004).

Various social thinkers have warned of the need to establish legal limits against economic power in labor relations. Karl Marx pointed out that work in the capitalist system can generate phenomena of alienation, in which the worker is separated from his productive activity, from the product of his work and from his own human essence (Marx, 1867). For his part, Max Weber warned that the rationalization of work in modern capitalism produces structures of labor discipline that require institutional counterweights to avoid forms of arbitrary domination (Weber, 1905).

In the same vein, Karl Polanyi argued that labor cannot be treated as a simple commodity within the market, since its commodification puts at risk the social stability and cohesion of communities (Polanyi, 1944). More recently, Guy Standing has described the emergence of the so-called *precariat*, a new social class characterized by job insecurity, contractual precariousness, and the absence of social protection (Standing, 2011).

From this perspective, Labour Law adopts a protective approach aimed at balancing the unequal relationship between employer and worker through principles such as the primacy of reality, favourability, the inalienability of rights and

equality.

The sociological analysis of power developed by Michel Foucault allows us to understand that labor relations are not structured only on the basis of formal hierarchies, but also through daily mechanisms of surveillance, control, and normalization of behavior (Foucault, 1975). These organizational dynamics can have a direct impact on the autonomy and dignity of the worker, to the point that behaviors are shaped.

In the same vein, Richard Sennett argues that the transformations of contemporary capitalism have generated new forms of job insecurity that profoundly affect the professional identity of workers, producing phenomena of social fragmentation and job insecurity (Sennett, 1998). In turn, Robert Castel warns that the erosion of labor guarantees can generate processes of social vulnerability that weaken the traditional mechanisms of integration and protection of labor (Castel, 1997).

Consequently, labor relations not only involve economic interests, but also the protection of fundamental rights such as human dignity, freedom of conscience, mental integrity, family life, and the personal development of the worker.

2. JURISPRUDENTIAL EVOLUTION OF REPARATION IN COLOMBIAN LABOR LAW

The development of Colombian Labor Law has been profoundly influenced by the jurisprudence of the Constitutional Court and the Labor Cassation Chamber of the Supreme Court of Justice. Through their decisions, these corporations have expanded the scope of the protection of fundamental rights in the field of work, they have even promoted the latest social reforms and we could say that these have been positive.

The Supreme Court of Justice has recognized that reparation in labor matters cannot be limited to a simple economic calculation of damages. In the judgment CSJ 6 of July. 2011 (Rad. 39867), the Labor Cassation Chamber pointed out that the former worker can claim objectified and subjective moral damages, understanding the former as those derived from the economic repercussions of the psychic disorders caused by the harmful event, and the latter as those that directly affect the emotional and affective sphere of the person.

Subsequently, in the CSJ SL887 judgment of 2013, the Court reiterated that the labor judge must analyze the psychological and personal consequences derived from the harm suffered by the worker, in

application of the constitutional principles of human dignity and social justice.

At the constitutional level, the Constitutional Court has emphasized that the right to work enshrined in article 25 of the CN implies the guarantee of decent and fair working conditions. In Judgment CCT-265 of 2024, the court analyzed the case of a woman head of household transferred to a different city, a decision that seriously affected her family life. In that ruling, it was reiterated that the exercise of *ius variandi* by the employer must respect the principles of reasonableness and proportionality, in this case, the difficulty of the worker to travel for almost six hours to get to work was analyzed, as well as the emotional impact of her son given his absence at home. It was noted that the employer unexpectedly suppressed, without any reason, the possibility of working at home.

Likewise, in Judgment CCT-073 of 2025, the Court addressed a case related to religious freedom in the workplace, in which a worker was dismissed for refusing to participate in an institutional activity for reasons of religious conscience.

In this order, restorative justice is aimed at the elimination of structural practices of exclusion, allows for the expansion of institutional responses to conflicts arising from precarious or covert labor relationships, as an example, in Judgment CCT-132 of 2025, it is recognized that, even in catalog sales or multilevel marketing schemes, covert labor relations can be configured. The ruling reinforces the constitutional protection of decent work, especially against forms of informal or precarious employment, and expands the protection of people in conditions of vulnerability within the labor market, in this way, this approach to justice applies reparation when it makes visible sectors historically discriminated against.

These decisions reflect that the labor conflict not only involves patrimonial interests, but also affects the dignity, identity, freedom and life project of workers.

3. RESTORATIVE JUSTICE AND COMPREHENSIVE REPARATION IN THE LABOR PROCESS

Traditionally, labor justice has privileged reparation mechanisms of an eminently economic nature. However, the evolution of international human rights law has prompted the adoption of comprehensive reparation models, which go beyond monetary compensation and incorporate measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition. This approach

recognizes that violations of labor rights not only generate patrimonial losses, but also profound effects on the dignity, autonomy and integrity of workers.

In this context, the concept of restorative justice emerges as an alternative model of conflict resolution aimed at repairing the damage caused through processes of dialogue, recognition of responsibilities and reconstruction of social relations. According to Howard Zehr, restorative justice focuses on the needs of victims, the responsibility of the offender, and community participation in conflict resolution (Zehr, 2002). Transferred to the field of labor law, this approach makes it possible to make visible inhumane work practices that must be eradicated, insofar as they objectify the worker and reduce him or her to a mere instrument of production.

A significant example of this problem in the Colombian context is found in the CSJ SP1033-2024 judgment of the Supreme Court of Justice of Colombia, with a presentation by Judge Myriam Ávila Roldán, in which the conviction against Claudia Maritza Castiblanco Parra for the crime of trafficking in persons for the purpose of labor exploitation and servitude was confirmed. The proven facts showed that the victim, who was pregnant and belonged to an indigenous community, was subjected to abusive conditions of domestic work, characterized by the absence of fair remuneration, excessive hours and a regime of dependency that nullified her personal autonomy.

In its considerations, the Court stressed that the crime of trafficking in persons does not necessarily require the existence of transnational mobility, since its essential element lies in the exploitation of the person. In particular, the court stressed that servitude constitutes a contemporary form of slavery, in which the victim is reduced to a state of permanent subjection incompatible with human dignity.

In relation to the right to work, the high court emphasized that this right cannot be understood as the obligation to endure undignified or abusive conditions. On the contrary, work must be carried out in conditions of freedom, equality and justice, guaranteeing the autonomy and personal development of those who exercise it. In this sense, labor exploitation that leads to servitude directly violates this fundamental right, by turning work into a mechanism of oppression and domination.

Consequently, the ruling articulates the criminal sanction with the need to guarantee comprehensive reparation to the victims, which includes the restitution of their rights, the recognition of the damage suffered and the adoption of guarantees of

non-repetition. In this way, a line of jurisprudence is consolidated that links criminal justice with the effective protection of the right to work and with the safeguarding of human dignity.

In the same vein, John Braithwaite argues that restorative justice is a regulatory model aimed at promoting the responsibility and social reintegration of those who participate in the conflict, allowing the reconstruction of social bonds deteriorated by harmful behavior (Braithwaite, 2002). Also, Daniel W. Van Ness and Karen Heetderks Strong highlight that this approach promotes participatory processes in which victims, offenders, and the community can build solutions aimed at repairing harm and restoring social coexistence (Van Ness & Strong, 2015).

From the perspective of international human rights law, the concept of comprehensive reparation has been extensively developed by the Inter-American Court of Human Rights. In the case of *Velásquez Rodríguez v. Honduras*, the court established that any violation of an international obligation that has caused damage entails the duty to make adequate reparation (Inter-American Court of Human Rights, 1989). Subsequently, in the case of *González et al. ("Campo Algodonero") v. Mexico*, the Court specified that reparations must include measures aimed not only at compensating for the damage suffered, but also at rebuilding the affected social fabric and transforming the structural conditions that allowed the violation of human rights (Inter-American Court, 2009).

At the doctrinal level, Theo van Boven has pointed out that victims of human rights violations have the right to a set of measures that include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (Van Boven, 1993). In a similar vein, Dinah Shelton argues that the central objective of reparation in international law is to restore, as far as possible, the situation that existed before the violation of the right and to ensure that similar events do not happen again (Shelton, 2015).

In the workplace, this approach acquires particular relevance due to the relational nature of work, in which conflicts can generate profound ruptures in the trust, dignity and emotional stability of workers. From this perspective, the reparation of labor rights can include measures such as reinstatement to employment, reparation of moral damages, psychological rehabilitation, public recognition of the harm, institutional training in labor rights, and the adoption of organizational reforms aimed at preventing the repetition of violating behaviors.

Along the same lines, in the case of *Employees of the Fireworks Factory of Santo Antônio de Jesus and their relatives v. Brazil*, the Inter-American Court of Human Rights ordered various reparation measures with a structural approach aimed at preventing future human rights violations. In particular, it provided for the adoption of education and awareness-raising programmes aimed at public authorities, workers and communities on the risks associated with the manufacture of fireworks, safety at work and the prohibition of child labour. It also ordered the Brazilian State to strengthen public policies aimed at preventing and eradicating child labor in hazardous activities, improving labor inspection systems, and developing programs that generate economic and labor alternatives for communities that depend on the pyrotechnic industry. These measures seek not only to provide reparations to the victims, but also to transform the structural conditions of vulnerability that allowed the events to occur, guaranteeing non-repetition and the effective protection of labor and children's rights.

From the above, it is possible to conclude that the evolution of contemporary labor law requires overcoming the traditional models of reparation limited to economic compensation, to move towards comprehensive reparation schemes that respond more adequately to the complexity of the violations that may occur in the workplace. Indeed, the effects derived from practices such as labor exploitation, servitude or undignified working conditions transcend the patrimonial plane and compromise essential dimensions of the worker, such as his dignity, his autonomy and his physical and psychological integrity. In this context, the incorporation of restorative justice approaches makes it possible to enrich the legal response to these conflicts, by promoting processes aimed at the recognition of harm, the assumption of responsibilities and the reconstruction of affected social ties. In turn, the jurisprudential development of the inter-American human rights system has consolidated a standard of comprehensive reparation that includes measures of restitution, rehabilitation, satisfaction, and guarantees of non-repetition, aimed not only at compensating the victims, but also at transforming the structural conditions that made possible the violation of their rights. From this perspective, labour law is increasingly seen as an instrument of material justice, in which the reparation of labour damage must contribute both to the restitution of violated rights and to the construction of work environments that are fairer, safer and more respectful of human dignity.

4. RESTORATIVE JUSTICE IN LAW 2452 OF 2025

Law 2452 of April 2, 2025, which adopts the new Procedural Code of Labor and Social Security, introduces significant changes in the Colombian labor process by strengthening the powers of the judge to guarantee comprehensive reparation of violated rights.

Article 3 of the new code establishes that the labor judge is the director of the process and must promote formulas of retributive, compensatory, restorative and therapeutic justice with the aim of rebuilding the relationships affected by the labor conflict.

This procedural mandate must be interpreted in a manner consistent with the constitutional and international obligations of the Colombian State in the field of human rights. Article 13 of the Constitution enshrines the equality of all persons before the law and establishes the duty of the State to protect especially those who are in conditions of manifest weakness.

Similarly, Article 1(1) of the American Convention on Human Rights establishes the obligation of States to respect and guarantee the rights recognized in that instrument without discrimination of any kind.

The Inter-American Court of Human Rights has noted that the principle of equality and non-discrimination constitutes a structural principle of international human rights law, particularly in Advisory Opinion OC-18/03 on the legal status of migrants.

At the domestic level, the Colombian Constitutional Court has reiterated that the right to work must be exercised in dignified conditions and free from discrimination (Judgment SU-049 of 2017).

In this context, the active role of the labour judge in the promotion of restorative justice mechanisms acquires special relevance, as it allows the structures of inequality present in the conflict to be recognised and measures to be adopted aimed not only at compensating for the damage caused, but also at

restoring the dignity of workers and preventing the repetition of discriminatory behaviour.

The new code also introduces procedural tools aimed at strengthening the protection of workers' fundamental rights, such as the possibility of ordering evidence *ex officio*, evidentiary analysis with a differential gender approach, the incorporation of differential approaches in judicial decision-making, and the expansion of reparation measures within the sentence.

These transformations show a paradigm shift in the Colombian labor process, aimed at overcoming a merely patrimonial vision of the labor conflict and moving towards a broader conception of social justice.

5. CONCLUSIONS

The evolution of Colombian Labor Law reflects a progressive process of expanding the protection of fundamental rights in the labor field. Constitutional and labour jurisprudence has played a central role in this process by recognising that labour disputes can have profound effects on the dignity and life project of workers.

In this context, the issuance of Law 2452 of 2025 represents a significant advance in incorporating principles of restorative justice in the Colombian labor process. This approach makes it possible to transcend traditional economic reparation and promote measures aimed at recomposing the social relations affected by the labor conflict.

More recently, the Supreme Court of Justice has highlighted the social and restorative function of work in different areas of the legal system. In ruling STP14521-2025, the high court stressed that work plays a fundamental role in the processes of resocialization and reconstruction of the life project of people deprived of liberty.

Consequently, the role of the labour judge takes on a broader dimension, insofar as it not only resolves legal conflicts, but also contributes to the construction of fairer, more dignified and balanced labour relations.

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