Editorial

¿quo vadis domine?

Walter René Cadena Afanador
Associated Professor, Universidad Militar Nueva Granada

Writing is an academic exercise in humility, but also a form of intellectual redemption. For a college professor investigating, reflecting, should not be an option, is simply an obligation, because there must be a shared responsibility between the teaching work and the importance of personal contribution in both the formation of students and the construction of knowledge, regardless of their discipline.

Writing has its risks, deepened when what is written is published. Published texts are a source of pride for its author, but also a heavy burden that will remind perennially to the writer what his thoughts once expressed. As stated by the Dutchman Cees Nooteboom, "publishing texts is equivalent to thinking aloud" (2010, p. 82). From there we should be so careful about what we write and publish.

This requires to get rid of that tentative and useless breath of academic or research superiority that derives from the fact that the author of an article published in the journal A or B, indexed in category Y or belonging to the Z database. These *productivity indicators*, as the current academic technocracy calls them, are not the essence, not the result itself. The academic attitude should be humble towards generated knowledge and of committed flexibility towards the questioning of prevailing paradigms. Going back to that clever and thoughtful narrator who is Nooteboom, academic humility should always be a path:

> Writing is to group what has been written before; you always have one hundred writers at hand, whether one not knows it or not desired it. In this regard, there is nothing to do. The best do not allow to be noted, what I do is work of servants (2010, p. 131).

Noble task that is inherent to the teaching practice in the legal discipline. The lawyer is a cornerstone in the construction of society. Because of its status and the roles the jurist has within the community, its influence has been and is significant. The lawyer's responsibility is superlative because of its multifaceted job profile and proximity to power: whether as judge, prosecutor, litigator, consultant, entrepreneur, legislator, politician, academic, businessperson, diplomat or ruler. Because of this ability to influence, the legal profession is perhaps the profession that has the greatest chance to resemble an architect of society, as it can mold it, for better or for worse. Just do not confuse the pride of being a professional with mere vanity.

The lawyer's task becomes increasingly complex, especially when our times are marked by legal abstractions or as called by Grossi (2003), for being a legal age of mythology. The law cannot fall into immobility, because it is a discipline that belongs to the applied social sciences. Law, as a human construction, should not forget that beyond the rules and legal fictions, there is an underlying reality, which is its object, where the human being is the fundamental rationale. In this sense, the cited Italian author is blunt to point:

> Law is more application that standard. Careful to immobilize it with a mandate, even more if the mandate find its own immobi-

> lization in a text; careful with the legal rule that becomes and remains in print. The risk is its probable departure from life.
>
> Law is, in first place, legislation; what wants to emphasize, beyond the change in terminology, that its authority is in the content that composes and proposed, that it is to be an objective reading of reality, an attempt to rationalize reality. It is an authority that comes from below, which makes it to be naturally observed and accepted by society (...). With the law-legislation even the homeless man can be reconciled (Grossi, 2003, p. 60).

The Latin American realities surpass the magical realism that many authors have described and denounced. Colombia, macondian paradise where everything happens and nothing happens, is no exception. Our country as an independent state was born amidst the context of liberation wars and conflicts, and said picture has accompanied national history in a steadily and ominous way. Tilly already told us that generally the state makes war and vice versa (2000, p. 109).

Currently the country is experiencing a new peace process between the government of President Juan Manuel Santos and the main guerrilla group, the FARC. The general perception about the process is a kind of skeptical expectation. Colombian society, burdened with so many decades of endemic violence, expects from the members of the negotiating table minimum assumptions within the process, such as justice, truth, reconciliation, reparation, full respect for human rights, among many others. Hence, in a post-conflict scenario, Law cannot escape from reality, that would generate insurmountable abysses between the regulation that the agreements reached could establish and its practical effectiveness.

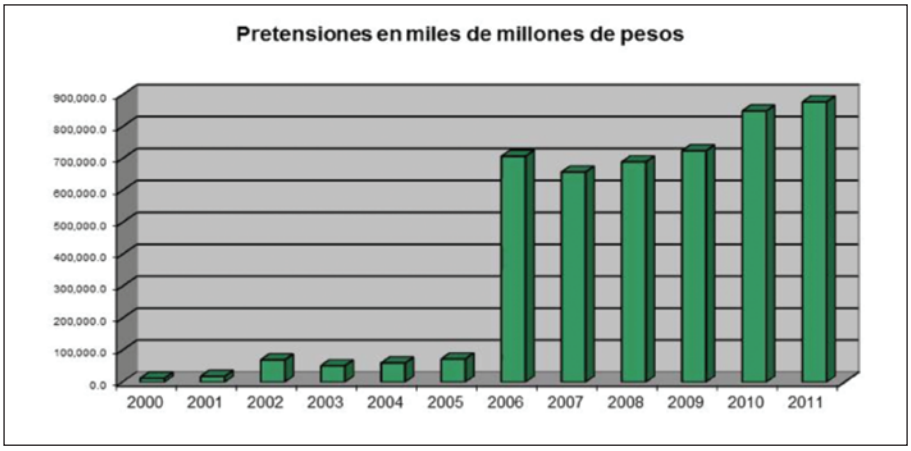
In this regard, the growing number of lawsuits and judgments rendered against Colombia for litigious administrative liability is troublesome. It should be a call for a deep reflection of the status of claims against the state, the budget projections made by the government in the last decade and the degree of state defaults in paying the handed down sentences.

Taking as reference the balance sheets presented annually to Congress by the General Accounting Office and the consolidated information for the National Legal Defense Agency of the State, there are four criteria relevant to this topic: the claims of the lawsuits filed against the state, the budget provisions, the sentenced to pay and the amount paid.

The claims in the lawsuits filed against the state (Graph num. 1) had a behavior of growth during the 2000-2005 period, ranging between $ 12 and 72 billion. This growth trend continued during the period between 2006 and 2011 on behalf of a lawsuit against then Incora (today Incoder) whose amount per claim was $ 523 billion. Fortunately for the nation, the State was acquitted by the State Council in what has been considered the most expensive administrative procedure in the country's history[1]. Excluding the Incora process, the amount of the claims reach 354 billion, equivalent to an increase of 29 times its value in the course of a decade.

[1] This lawsuit was filed by the heirs of Durango Mirócletes Ruiz, sopetranean lawyer that in the 1920s treasured various rural titles from eastern Antioquia. The disputed territory was the country state called "Tierras del Oriente Antioqueño" with an area of 1,926 square kilometers (slightly larger than Quindio), belonging to 11 municipalities. The ruling handed down by the State Council on November 7, 2012 upheld the decision ad quo to deny the claims of the plaintiffs who "lost possession on the land before it had begun the process of domain extinction. This corporation would have done wrong in ordering the State to repair damage that occurred due to circumstances beyond the procedure of the Incora"(Consejo de Estado, November 14, 2012).

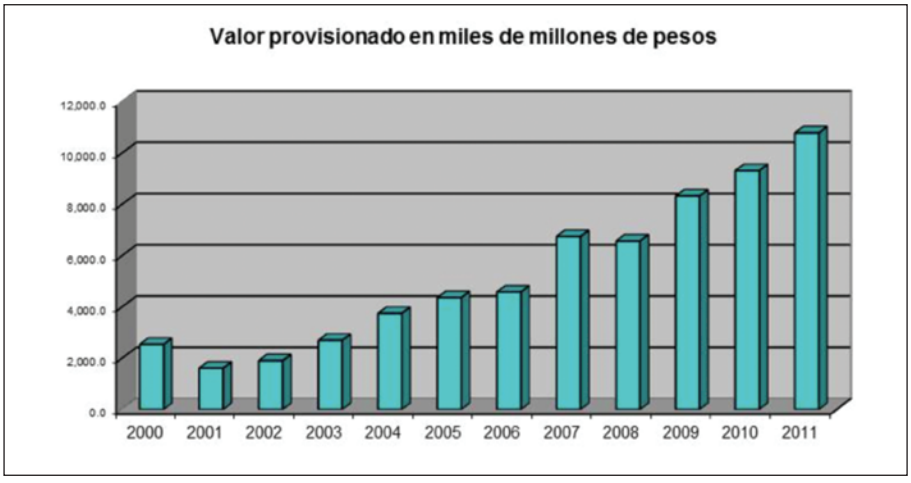
Graph 1. Form (in billions of pesos)



Source: Contaduría General de la Nación (2013)

The accrued value accounting category (Chart no. 2) quadrupled during the period from 2000 to 2011, from $ 2.5 trillion to $ 10.7 trillion, equivalent to 3.2% of the GDP for that year.

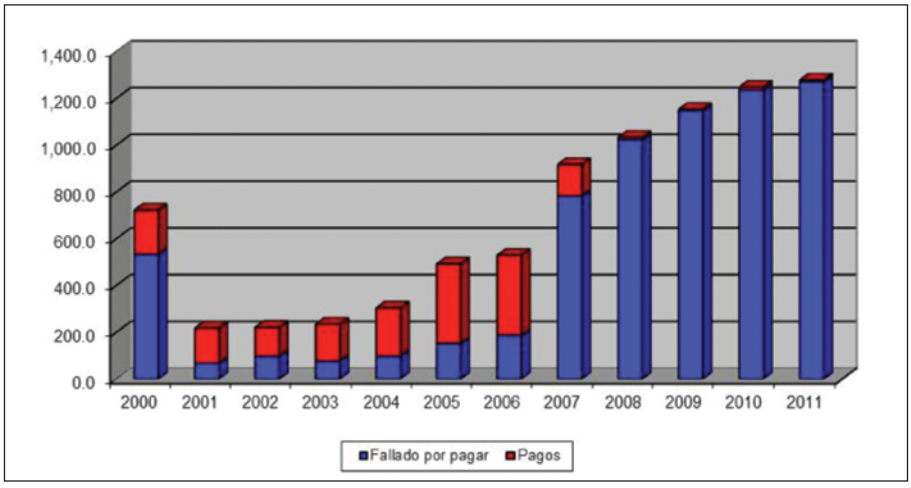
Graph 2. Accrued value (in billions of pesos)



Source: Contaduría General de la Nación (2013)

Graph num. 3 makes a comparison between the *Sentenced to pay* and *Payments* accounting categories. Regarding the first category, there are two distinct periods: the first one is between the year 2000 ($ 533.9 billion) and year 2006 ($ 187.3 billion), with a 65% reduction in the amount of convictions to the State, the second phase from year 2007 ($ 783.4 billion, i.e. more than three times the amount of the previous year) to 2011 ($ 1.271 billion). Thus, in the span of 12 years the convictions to pay have doubled, with a steady increase in the past five years. This trend coincides with the previous graph, in which the accrued value showed an increase of 135% during the past five years.

Graph 3. Sentenced to pay vs. Payments (in billions of pesos)



Source: Contaduría General de la Nación (2013)

Regarding the accounting category of payments, a trend that has made a career in convictions of administrative contentious lawsuits is evident: that the State dilates payments unjustifiably. Again, the two periods mentioned above, the first is from 2000 to 2006 where the accounting category of *Payments exceeded the amount of Sentenced to pay*. The relationship is dramatically reversed from 2007 to 2011. For this year, the state only paid $ 7.8 billion of the $ 1.271 billion corresponding to what was sentenced to pay. This amounts to a government default in payment of 99.4%.

This last figure is simply outrageous. In the courtrooms there is a long-standing phrase that is "respect but do not share" a sentence when it is damning, but in the case of the State seems to mean "respect but do not pay" the conviction. It is unfortunate the poor administration of the State through its agencies such as the National Legal Defense Agency of the State, the Ministry of Finance and the Fiduprevisora, by not having an efficient management of their legal obligations to their own citizens.

In this way, how can one demand to the citizens to fulfill their legal obligations, when the State itself is the first one that fails to fulfill them?

Yes, it is true: they are abstractions of Colombian reality in times of law mythology.

REFERENCES

Agencia Nacional de Defensa Jurídica del Estado. (2013). Notas de prensa. Extraído de http://www.defensajuridica.gov.co/portal_prensa.html en Mayo 22 de 2013.

Consejo de Estado. (2012, november 12). Enrique Durango Sanín y otros vs. Incora (hoy Incoder). Proceso núm. 05001233100020030230801 (37046).

Contaduría General de la Nación (2013). Sistema CHIP. Extraído de http://www.chip.gov.co/schip_rt/ en mayo 24 de 2013.

Grossi, P. (2003). Mitología jurídica de la modernidad. Madrid: Editorial Trotta.

Nooteboom, C. (2010). En las montañas de Holanda. Barcelona: Random House Mondadori.

Tilly, C. (2000). Las Revoluciones Europeas, 1492-1992. Madrid: Alianza.