

MATERIAL INFORMATION

November 11, 2022

Concerning the latest news regarding the claim of miscarriage of justice against the JUDICIAL BRANCH - HIGHER COUNCIL OF THE JUDICIARY - EXECUTIVE DIRECTORATE OF JUDICIAL ADMINISTRATION, wherein Corficolombiana was joined to the proceeding as a co-defendant (*litisconsorte*), we should like to mention the following:

This is a first instance ruling within a claim seeking direct compensatory damages against the Nation - Higher Council of the Judiciary - Executive Directorate of Judicial Administration, wherein Corficolombiana was joined as a co-defendant (*litisconsorte*), regardless that it was not nor serves as judge, and therefore is not a qualified party that could commit a miscarriage of justice.

This Ruling is not only arbitrary because it reopens a debate that took place in the criminal and civil proceedings, ignoring the principle of *res judicata* and the legitimate decisions of the judges and magistrates, but also because, according to the calculations of the Secretary of the Court (not based on any expert opinion), some non-existent CDTs (fixed-term certificates of deposit for its Spanish acronym) whose alleged principal value was ONE HUNDRED SEVENTY-FIVE MILLION, FIVE HUNDRED THOUSAND, PESOS (COP 175,500,000.00), inexplicably were worth FOURTEEN TRILLION FOUR HUNDRED SIXTY-EIGHT BILLION, ONE HUNDRED AND THIRTY-NINE MILLION, SIX HUNDRED AND SIXTY-NINE THOUSAND, EIGHT HUNDRED AND SIXTEEN PESOS AND 70 CENTS (COP 14,468,139,669,816.70).

The magistrate who originally presented the Court's majority opinion before the Administrative Court of Cundinamarca, Magistrate Carlos Alberto Vargas Bautista, who ex officio issued the joinder for Corficolombiana to this proceeding, was dismissed and convicted for corruption in other judicial processes.

According to Magistrate Clara Cecilia Suárez - the judge presenting the opinion in this ruling; - the Civil Chamber of the Higher Court of Bogotá, which ruled within the collection proceeding, as well as the Civil Chamber and the Labor Chamber of the Supreme Court of Justice, who agreed on the legality of the Court's decision, were mistaken. The decision of said Chambers, ruling in favor of Corficolombiana, rejected the payment of the alleged CDTs to Mr. Alejandro González Beltrán.

The history of these alleged CDTs from Corfivalle (a company with which Corficolombiana later merged), is publicly known. It concerns three false CDTs whose total principal value was COP 175,500,000, allegedly issued in 1989, which were presented to Corfivalle for payment in 1999. The payment of the CDTs was rejected, as there was no evidence of said CDTs, and gave rise to a complaint for fraud and document forgery against Alejandro González Beltrán, as well as to the lengthy legal battle, which concluded that the Corficolombiana had acted legitimately in its refusal to pay because it had not been demonstrated throughout the collection proceeding that Mr. Gonzalez had deposited the money for the CDTs.

Corficolombiana which has demonstrated the non-existence of the CDTs, filed a motion for clarification and a motion to amend the first instance ruling (attached) on November 8, which presents evident mathematical errors in addition to inexplicable financial calculations that led to the exorbitant sum. Similarly, the Judicial Branch, the main defendant in this proceeding, filed a brief for clarification and amendment.

Within the legal term, Corficolombiana will file the corresponding appeal before the Council of State, and therefore this ruling will only be effective once the appeal is resolved by said judicial authority.

(On letterhead of the legal firm Esguerra Asesores Jurídicos)

Honorable Magistrates
ADMINISTRATIVE COURT OF CUNDINAMARCA
Third Section - Subsection B
Presiding Judge: Clara Cecilia Suárez Vargas
Office of the Judge

RE: Claim for direct compensatory damages filed by **Alejandro González Beltrán** against the **Nation-Judicial Branch** and **Corficolombiana S.A.**

Filing No. 25000233600020160236900

Subject: Motion for clarification and amendment of the Ruling

I, **JUAN CARLOS ESGUERRA PORTOCARRERO**, as legal proxy for **CORFICOLOMBIANA S.A.** (“**CORFICOLOMBIANA**”) in this proceeding, in accordance with articles 285 and 286 of the Colombian General Procedural Code (“**CGP**” for its Spanish acronym), applicable in line with article 306 of Law 1437 of 2011 (Colombian Administrative Procedural and Contentious Administrative Code, “**CPACA**” for its Spanish acronym), respectfully request the **CLARIFICATION** and **AMENDMENT** of the Ruling of October 21, 2022, notified to my client on November 3, 2022, via data message.

First, I will refer to (I) those parts that, because they offer real grounds for doubt, must be clarified by the Court; and then, without prejudice to the request for clarification that is raised herein, denote (II) several extensive arithmetical errors wherein the Court incurred in determining the alleged material damages whose compensation it ordered in the Ruling that is the subject of these requests.

I. REQUEST FOR CLARIFICATION OF THE RULING REGARDING THE INTEREST RATE USED FOR THE SETTLEMENT OF DEFAULT INTEREST PAYMENTS

I respectfully request **clarification** of the Ruling of October 21, 2022, as there is no clarity about some of the figures used by the Administrative Court of Cundinamarca to determine the damages. Specifically - given it was not specified although it was absolutely necessary to do so - the interest rate that was applied to determine the default interest.

According to article 285 of the CGP, applicable to this matter by express reference set for in article 306 of the CPACA, the rulings handed down in contentious-administrative proceedings may be clarified when “*they contain concepts or phrases that offer real grounds for doubt, as long as they are included in the operative part of the ruling or affect it.*”¹

¹ Article 285 of the General Procedural Code: “*The ruling cannot be revoked or reformed by the judge who issued it. However, it may be clarified, ex officio or at the request of a party, when it contains concepts or phrases that offer real grounds for doubt as long as they are included in the operative part of the ruling or affect it.*” [Under the same circumstances, the clarification of the order will proceed. The clarification will proceed ex officio or at the request of a party, (as long as it is) presented within the term of execution of the order.] [The ordinance that answers the clarification does not admit appeals, but within its enforceability, those that can be asserted against the order that is the subject of clarification may be filed.]”

The Administrative Supreme Court (*Consejo de Estado*) has upheld that the clarification of the ruling “*becomes an instrument provided to the parties and the judge, to offer clarity and explain concepts or phrases resultant from a wording that makes it difficult to understand the ruling; concepts that are difficult to understand which are relevant in the decision, since they are part of the operative part of the ruling or affect it.*”²

In this case, there is an evident lack of clarity about the interest rate used by the Administrative Court to settle the default interest, based on which it condemned the JUDICIAL BRANCH and CORFICOLOMBIANA to pay the sum of “fourteen trillion four hundred and sixty and eight billion, one hundred thirty-nine million, six hundred sixty-nine thousand, eight hundred sixteen pesos and 70 cents legal tender (\$ 14,468,139,669,816.70).”

In this regard, on page 76 of the ruling, the Court indicated that in order to determine the default interest, it would use the following formula:

“Settlement of default interest: Between February 18, 1999, date of this settlement [sic]. According to the rate certified by the Banking Superintendence

$$i = \frac{K * \% * t}{30}$$

Between November 23, 1996, and July 31, 2001, the default interest limit was 1.5 times that of the ordinary freely assigned loans; subsequently, the Current Bank Interest is used as the base and, finally, the Consumer and Ordinary Credit Interest Rate as of January 1997, certified by the Financial Superintendence of Colombia.”

Well, truthfully this last paragraph regarding the applicable interest rate offers real grounds for doubt, as it indicates three possible rates applicable to settle the default interest, but does not specify which of these were used to calculate the interests. This is not a trivial question, since, according to said paragraph, there would even be different rates applicable to the same period.

Consequently, the following doubts arise that influence the operative part of the Ruling:

- (i) What reference rate was used for the period between February 18, 1999, and July 31, 2001? Bear in mind that the Ruling indicates that “*as of 1997*” the “*Consumer and Ordinary Credit Interest Rate*” is used as the base. At the same time, it mentions the “*ordinary freely assigned loans*” rate for the period between November 23, 1996, and July 31, 2001.
- (ii) What is the “*interest on the ordinary freely assigned loans*” referred to in the Ruling for the period up to July 31, 2001? And, in its place, why is the certification of the current bank interest rate referred to in article 884 of the Commercial Code not used?
- (iii) Why is “*the Consumer and Ordinary Credit Interest Rate as from 1997*” used?
- (iv) Finally, to calculate default interest, was an annual nominal rate or the effective rate used?

Given that the doubts regarding the applicable interest rate and rates applied to calculate default interest directly influence the ruling imposed on CORFICOLOMBIANA in its operative part, the above points must be clarified in accordance with the provisions of article 285 of the CGP.

² Council of State, Administrative-Contentious Chamber. Order dated February 13, 2018. File No. 11001-03-2 5-000-2 014-00360-00(A).

II. AMENDMENT OF ARITHMETIC ERRORS AND ERRONEOUS DETERMINATION OF DAMAGES

Without prejudice to the noted lack of clarity in the aforementioned points, which is dealt with in the preceding chapter, I respectfully request, additionally and on the other hand, that the Ruling of October 21, 2022, be **amended**, since the settlement of the damages made by the Administrative Court contains several gross arithmetical errors.

Article 286 of the CGP, applicable by reference set forth in article 306 of the CPACA, provides that “[a]ny order in which a purely arithmetical error has been incurred may be corrected by the judge who issued it at any time, *ex officio* or at the request of a party, by an order thereto.”

Jurisprudence from Constitutional Court and Administrative Supreme Court has indicated that “a mathematical error is one that arises from a purely mathematical calculation when the computation has been wrongly performed. Consequently, its **amendment** must ensure to adequately carry out the arithmetic operation erroneously performed, without modifying or altering the factors or elements that are part thereof.”³

In the Ruling, my client is condemned, jointly and severally with the Nation-Judicial Branch, to pay the sum of “FOURTEEN TRILLION FOUR HUNDRED SIXTY-EIGHT BILLION, ONE HUNDRED AND THIRTY-NINE MILLION, SIX HUNDRED AND SIXTY-NINE THOUSAND, EIGHT HUNDRED AND SIXTEEN PESOS AND 70 CENTS (\$ 14,468, 139,669,816.70).”

However, the Administrative Court made a mistake in the computation within said Ruling, essentially: (i) because it made mathematical errors when applying the formula it established for the calculation of damages; and (ii) because it improperly applied an effective annual rate - whose origin is not clear, and which it set on its own - for default interest that was calculated on a monthly or fractional basis.

(i) Mathematical errors in applying the formula established by the Court

As can be seen on pages 76 to 81 of the Ruling, the Administrative Court entered the result of the calculation of default interest from February 1999 to October 2022 in the column titled “*result*”.

All the values in that column, whose total amounts to fourteen trillion four hundred sixty-eight billion, one hundred and thirty-nine million, six hundred and sixty-nine thousand, eight hundred and sixteen pesos and 70 cents in legal tender (\$ 14,468, 139,669,816.70), do not match at all the results obtained by applying the formula established by the Administrative Court, namely:

$$i = \frac{K * \% * t}{30}$$

Let’s use as an example the computation the Court made for the period to February 1999.

The Court included eleven (11) days of default interest for the month of February 1999, at an annual rate of 66.69%, on the capitalized balance of the CDTs’ value over ten years, which, according to the Court, amounts to TWO BILLION, TWO HUNDRED FORTY-SEVEN MILLION, EIGHT HUNDRED ELEVEN THOUSAND, TWO HUNDRED THIRTY PESOS AND EIGHTY-FOUR CENTS LEGAL TENDER (\$ 2,247,811,230.84).

³ Constitutional Court, Ruling T-875 of 2000. Also, see Council of State, Fourth Section. Order dated October 22, 2020. File No. 25000-23-37-000-2014-00013-00 (24175).

According to the Administrative Court, the result of said mathematical computation is one hundred billion, four hundred and seventy million, six hundred and eighty-eight thousand, three hundred and twenty-two pesos and twenty-one cents (\$ 100,470,688,322.21). Page 76 of the Ruling includes the following:

Month	No. of Days in settlement	Legal Interest Rate	Max. Rate Allowed	Result
Feb- 99	11	44-46%	66.96%	\$100,470,688,322.21

It so happens that the Court made a gross mathematical error. If we apply the formula indicated by the Court, for the period between February 18, 1999, and February 28, 1999, the result of default interest is as follows:

$$i = (\$2,247,811,230.84 * 66.69\% * 11) / 30$$

$$i = \$549,657,280.3$$

Note that the difference between the result of the computation made by the Court and the result of the application of the formula is equal to ninety-nine billion, nine hundred and twenty-one million, thirty-one thousand, and forty-one pesos and ninety-one cents legal tender (\$ 99,921,031,041.91).

This mathematical error is repeated in the calculations of the other periods.

However, the gross mathematical errors incurred by the Court in the calculation of default interest have an uncertain origin. They could be due to an error in the principal used as the basis for the calculation or may be due to other factors. All of this, as I will explain, show the need to amend the settlement made by the Court and, consequently, the ruling imposed on CORFICOLMBIANA.

(ii) Court’s errors in applying the rate used to calculate default interest

In addition to the aforementioned mathematical errors, the Court erred in calculating default interest, because it improperly applied an effective annual rate - whose origin is also unclear and which it also determined - for default interest that was calculated on a monthly or fractional basis.

For example, using as reference the rate the Administrative Court applied for the month of February 1999 (11 days), the result of the settlement of default interest would equal forty-five million, eight hundred and four thousand, seven hundred and seventy-three pesos and thirty- six cents (\$ 45,804,773.36).

The Administrative Court will easily be able to note that the difference between forty-five million, eight hundred and four thousand, seven hundred and seventy-three pesos and thirty-six cents (\$ 45,804, 773.36), and one hundred billion, four hundred and seventy million, six hundred and eighty-eight thousand, three hundred and twenty-two pesos and twenty-one cents (\$ 100,470,688,322.21), **is more than two hundred thousand percent (219.325%)**.

Based on this error, the mathematical **amendment** of the entire table that calculates default interest is requested, starting on page 76 of the ruling.

For example, for the period of March 1999, the Administrative Court arrived at a calculation for a total value of one hundred and eighty-three billion, four hundred and seventy-nine million, three

hundred and seventy-seven thousand, four hundred and seventy-eight pesos and forty-seven cents, legal tender (\$ 183,479,377,478.47), in this way:

Month	No. of Days in settlement	Legal Interest Rate	Max. Rate Allowed	Result
Mar-99	14	44.32%	66.48%	\$100,231,800,934.87
Mar-99	17	36.81%	55.22%	\$83,247,576,543.60

The calculation result should be different if an annual interest rate had not been applied, as was wrongly done, to a calculation that was made month by month or by a fraction of a month, as follows:

- For the first fourteen (14) days of March, the default interest, at a rate of 66.48%, would amount to fifty-eight million, one hundred thirteen thousand, four hundred thirteen pesos and two cents legal tender (\$ 58,113,413.02).
- For the following seventeen (17) days of March, at the maximum rate of 55.22%, the default interest would amount to fifty-eight million, six hundred fourteen thousand, one hundred seventy-five pesos and forty-one cents legal tender (\$ 58,614,175.41).

Thus, the default interest that had to be settled for the entire month of March 1999, corresponded to a total of one hundred and sixteen million, seven hundred and twenty-seven thousand, five hundred and eighty-eight pesos and forty-three cents legal tender (\$ 116,727,588.43), and not one hundred and eighty-three billion, four hundred and seventy-nine million, three hundred and seventy-seven thousand, four hundred and seventy-eight pesos and forty-seven cents legal tender (\$ 183,479,377,478.47), as the Court wrongly concluded.

Note how, only in the first two months (February and March 1999) of the calculation, the Administrative Court calculated the default interest as two hundred eighty-three billion, nine hundred fifty million, sixty-five thousand, eight hundred pesos and sixty-eight cents (\$ 283,950,065,800.68). This is equal to, no more and no less, 126 times the sum of two billion, two hundred forty-seven million, eight hundred eleven thousand, two hundred thirty pesos and eighty-four cents (\$ 2,247,811,230.84) which allegedly should have been paid to the plaintiff for the principal of the CDTs and their yields.

Thus, it is clearly evident that the entire settlement of the default interest table (p. 76 et seq. of the Ruling) suffers from serious errors of a mathematical nature, which must be fully corrected, as required by law.

* * *

Based on the aforementioned reasoning, I respectfully request the Administrative Court to clarify and amend the Ruling of October 21, 2022.

On behalf of the Magistrates of the court, with all due respect,

(Electronic signature)

JUAN CARLOS ESGUERRA PORTOCARRERO

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