False positives, extrajudicial executions, homicide of a protected person, and forced disappearance in Colombia[1]

Falsos positivos, ejecuciones extrajudiciales, homicidio de persona protegida y desaparición forzada en Colombia

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Abstract

During the last years, the indistinct and undifferentiated use of four terms related to serious violations of Human Rights and International Humanitarian

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Law (IHL) has made a career in different settings in our country, they are: Forced Disappearance, Homicide of a Protected Person, Extrajudicial or Extralegal Execution and the expression Positive False. The issue is of such relevance that the confusion has reached the Highest Courts, national and international Human Rights organizations, universities, and the media, among other scenarios. In these contexts, judicial decisions are made, reports on violation of Human Rights are presented, academic researchers are carried out, as well as journalistic columns or news events, which require a high level of socio-legal rigor in their analysis. The conceptual, theoretical, and politic differences of these terms related to serious violations of Human Rights are presented in these reflections.

Keywords: Derecho humanitario, derechos humanos, justicia, responsabilidad del Estado, Instrumentos internacionales.

Resumen

Durante los últimos años, el uso indistinto e indiferenciado de cuatro términos relacionados con graves violaciones a los Derechos Humanos y al Derecho Internacional Humanitario (DIH) ha hecho carrera en diferentes escenarios de nuestro país, ellos son: Desaparición Forzada, Homicidio de Persona Protegida, Ejecución Extrajudicial o Extralegal y la expresión Positivo Falso. El tema es de tal relevancia que la confusión ha llegado a los más altos tribunales, organismos nacionales e internacionales de Derechos Humanos, universidades y medios de comunicación, entre otros escenarios. En estos contextos se toman decisiones judiciales, se presentan informes sobre violaciones a los Derechos Humanos, se realizan investigaciones académicas, así como columnas periodísticas o hechos noticiosos, que requieren de un alto nivel de rigor sociojurídico en su análisis. En estas reflexiones se presentan las diferencias conceptuales, teóricas y políticas de estos términos relacionados con graves violaciones de los Derechos Humanos.

Palabras-clave: Falsos positivos, desaparición forzada, ejecución extrajudicial, ejecución extralegal.

Introduction

The misrepresentation, confusion or lack of conceptual precision and clarity in this political – legal categories, has implications of different order due to the effects on the citizens´ misperception of a specific crime and to the inadequate management of the "media" regarding the relationship that exists between serious "violations of Human Rights," the internal armed conflict

and its actors. Also, in academic or politic circles of debate and discussion, and in judicial decisions issued (Arévalo et al, 2022), there is a confusion when thinking that the four categories marked have the same meaning. These concepts are mentioned equally, used interchangeably to refer to the detention, retention, arbitrary deprivation of liberty or disappearance of a person, who generally is found without life, in a scene of an alleged armed confrontation, or buried like a *NN*, in a cemetery, in a mass grave or that is presented to public opinion as a combat casualty.

However, there exist serious consequences of not differentiating the seriousness of the fact that same practice is called or catalogued in different ways, or that terms are confused with each other, specially due to the seriousness of extrajudicial executions in the international context or the systematic and widespread practice of the crime of forced disappearance or, more recently, the homicide of protected person in Colombia.

It is necessary to clarify that not in all cases, called as "extrajudicial executions" or "false positives", we are facing with events related to forced disappearances, while some other cases can be classified as other crimes. We will be faced with a forced disappearance in the terms of Law 589 of 2000[5]. A "forced disappearance" is configured when four elements are met: the victim is deprived of freedom (regardless of the form), is hidden, is denied and is removed from legal protection.

The central concern is to identify the reason why the "crime of forced disappearance in Colombia" has been historically covered up and how, by not recognizing it as a widespread and systematic practice, violating Human Rights, in the development of the "internal armed conflict", it has reached the highest rates of impunity. In spite of being typified as a crime, the re-victimizing facts are reiterated and the Colombian society does not manage to dimension the magnitude of this flagellum, nor its inhuman results in the armed confrontation or outside of it. This hinders resilience, "in particular to justice and reparation that is the responsibility of the state and society," Varona, G (2022). Its ignorance, misinformation and misrepresentation of its practice, have anesthetized us, despite the high number of direct and indirect victims, the permanent denial of its practice by the State and its institutions; ignoring the recognition and legal development it has had in recent years, especially since its classification as a crime in the year 2000.

In other societies, which have moved from times of conflict to peace, the reaction has been different as they have expressed solidarity with the victims, have made an effort to search for them, have demanded the truth about their

[5] "At the legislative and regulatory level, there is a set of mechanism to punish forced disappearance and ensure the search for missing persons. Laws 589 and 599 of 2000 classified the crime of forced disappearance." (Sixth Review Chamber, Constitutional Court. Judgment T- 129 of 2022. Substantiating Magistrate: Gloria Stella Ortiz Delgado).

disappearance and the reason for committing it, have demanded justice for their cases and have been building reconciliation based on the recognition of their practice or commission by the perpetrators.

In our society, the use of other names, terms, qualifiers or euphemisms to refer to what are actually forced disappearances blurs reality, delegitimizes the victims, re-victimizes them and their families, generates confusion in society and what is more serious, it distances society from those responsible, as active subjects or determiners, they are not socially, morally or legally sanctioned for this conduct, hence the high rates of impunity and re-victimization. Nor does it allow evidence of the negative impact along with the direction of resources and public goods allocated by national order entities to perpetuate or allow this practice to be perpetuated. It prevents victims and society from being compensated in a differentiated and comprehensive manner for the damage caused. For all of the above, the society in Colombia also has the right to know the truth and to guarantee the non-repetition of these violations.

Part of the reasons for indifference are based on a practice aimed at ignoring or making the crime invisible, an issue which contributes with a meaningful work the informational stratagems of the "media" or the cover-up speeches of those who have the legal duty to investigate, prosecute and punish those responsible for these behaviors. Another relevant aspect is the treatment of this criminal behavior by the Military Forces and the Police, despite the fact that in many of these cases are active members of their forces who are involved in their commission, in a State that prides itself on being democratic.

A recent fact that reflects this situation is the case delivered by "Fiscalía General de la Nación" to "Justicia Especial para la Paz - JEP", called *"Muertes ilegítimamente presentadas como bajas en combate por agentes del Estado"*, from which it is not possible to infer, from the outset, the commission of any type of criminal conduct, despite the majority of these cases are precisely cases of "forced disappearance", which the "Fiscalía" also insists on calling "false positives" or "extrajudicial executions", which according to the United Nations rapporteur Philip Alston, would exceed 10,000 cases in Colombia.

This article seeks to raise the discussion around the need to identify and differentiate, through their main characteristics and the context where they are developed, what is known as "False Positives, Extrajudicial Executions, Homicide of a Protected Person and Enforced Disappearance"; pointing out their differences, describing the conceptual scope, legal framework and context in which each term should be legally used.

We also argue that the "forced disappearance of persons" is not only a "crime against humanity", it is also a State crime and as such it is socially invisible, unrecognized and its practice is denied; as Zaffaroni mentions "the

State crime is usually denied the fact itself, as in the case of the Holocaust by Nazism, it is claimed that the facts did not occur or were not as described" by the victims, among other techniques of neutralization[6].

1. False Positive

A "false positive", in fact, is not a crime that is typified in the Criminal Code, nor is it an extrajudicial execution and much less is it the "crime of forced disappearance", nor is it a legal technical term that leads to identify, represent, demonstrate or equate some criminal conduct. The "false positive" is not a violation of a human right, nor a violation of IHL, since it is, if it is wanted, a euphemism.

The term "false positive" is used in the medical field to indicate "findings or evidence that were considered true are later proven false, the certainty or falsity depends on the observer's ability to evaluate the evidence" in relation to what is intended to be proven (Fundación Revista de Medicina, 2012). This expression used recurrently to describe "violations of Human Rights" in Colombia has other linguistic scope referring to "justificatory use of violence". [7]

The result of a military operation is immediately and exaltedly shown as positive, which later, almost clandestinely, in silence, is proven to be false.

The subjective expression "false positive" was spread since 2008 by the media, when complaints made by Secretary of the Government of the Mayor's Office of Bogotá, Clara López Obregón, who was summoned to both, Bogotá City Council and House of Representatives for statements "against members of the Public Force" in the events that were taking place in Ciudad Bolívar. Both corporations criticized her and asked for her resignation considering that her version was hasty. The Deputy Prosecutor then sought to refute the complaint and Secretary of Government asserted in a categorical tone that there was no forced disappearance for homicide.

The government and the media had to agree with her when the forced retirement of 28 high-ranking soldiers was ordered, and the complaints were ratified by the justice system that has handed down sentences for the "crime of forced disappearance" regarding those events consisting on disappearance of "19 missing young people who were between 17 and 32 years old, almost all of

[6] "Neutralization techniques are understood as those methods used by those who commit a crime to justify their behavior, without openly opposing to the existence of a legal or social norm that sanctions them. With them the offender seeks to neutralize feelings of guilt. These techniques were worked on by Sykes and Matza and they are divided into five: denial of responsibility, denial of harm, denial of the victim, condemnation of the condemner, and appeal to higher loyalties." (Sykes & Matza, 2008).

[7] "In Colombia, the murder of innocent civilians in the hands of soldiers who presented them as a guerrillas killed in combat, in order to obtain benefits or promotions, is known as "false positives". (SWI, 2022).

them were unemployed or worked in trades such as construction and mechanics. They were, in general, humble young people who lived on the margins of Ciudad Bolívar, Altos de Cazucá, Soacha[8] and Bosa;" later it would be known the cases occurred throughout the national territory. (Truth Commission).

Revista Semana was one of the first media to use the expression False Positives:

> "False Positive Accounts: The Attorney General's Office investigates more than 900 cases that occurred between 2007 and 2008, while the Prosecutor's Office investigates another 716 complaints. This is how justice advances to establish the truth about extrajudicial executions. Until January 26, the Attorney General's Office had 943 investigations, the majority for alleged crimes committed in Antioquia and Caquetá. And it has reopened 42 cases that the justice system had closed, 17 of them executed in the department of Antioquia." And it continues "...Today the Prosecutor's Office has 716 investigations, of which the majority of them are carried out in Antioquia and the Caribbean Cost" (…) (Revista Semana, 2009).

The "UN special rapporteur, in a report presented after his visit to Colombia in June 2009, denounced that there is "a pattern of extrajudicial executions" and that impunity covers 98.5% of the cases:

> "My investigations found that members of Colombia's security forces perpetrated a significant number of extrajudicial executions in a pattern that was repeated throughout the country. ... Although these killings were not committed as part of an official policy, I found many military units engaged in so-called "false positives," in which victims were killed by the military, often for the soldiers' personal gain or profit. Usually, the victims were lured under false promises by a recruiter to a remote area where they were killed by soldiers, who then reported that they had been killed in combat and manipulated the crime scene." (UN, Report of May 27, 2010, by Philip Alston. Special Rapporteur on Arbitrary Executions).

It is pertinent to note that:

> "In this case of the missing youths in Soacha, a *modus operandi* of the perpetrators was also established, in which not only members of the security forces were involved, but also civilians who were in charge of recruiting and deceiving the youths, make them false promises and facilitate their transfer to the site of a "supposed job", the recruiters put the military unit on alert so that in

[8] "While the balance of the war began to tip in favor of the State, one of the most serious scandals regarding violation of Human Rights by the Military Forces in its history broke out. In 2008, the case of 19 young people from the municipality of Soacha and the locality of Ciudad Bolívar, in the south of Bogotá, who had appeared in a common grave in Ocaña, Norte de Santander, after being executed and presented as guerrillas killed in combat by the Army." (Truth Commission).

> a false checkpoint they would take them down and after leaving them without documents ("undocumenting" them) they would stage a false confrontation to pass them off as combat casualties, when in reality they were killed in a state of defenselessness." (JEP-Special Justice for Peace).
> "Thus, the victims who had been deprived of their freedom by artificial means ended up disappearing, by deception they were taken out of their social context, with unknown destination, to hide them and refuse to give information of their whereabouts, removing them from the protection of the law, which was precisely what happened by leaving them without documents ("undocumenting" them), murdering them and burying them as N.N., hiding their personal objects that would allow the possible identification of the victims by the competent authorities, ensuring at all times that their crime would go unpunished." (JEP-Special Justice for Peace).

According to Serralvo, "under his political project of defense and security, a regulatory framework of incentives and stimuli was developed for the members of the Public Force, aimed at achieving military results against illegal armed groups. Within the framework of this policy and in the face of the demand, from the highest government authorities, to obtain quantitative results by the Army in the fight against armed groups." (2020)

As a consequence of public denunciation, the system of benefits or incentives for members of the Public Force was introduced to the legal system by means of the "Ospina Directive" from Minister of Defense Camilo Ospina. The purpose of Ministerial Directive 029 of 2005 was:

> "Define a ministerial policy that develops clear and defined criteria for the payment of rewards for the capture or killing in combat of leaders of illegal armed organizations, war material, intelligence or communications material and information on activities related to drug trafficking and payment of information that serves as a basis for the continuation of intelligence work and the subsequent planning of operations" (Ministry of National Defense, 2005, p. 1).

On that occasion Juan Manuel Santos, Minister of Defense, faced with the scandal of the disappearance of young people in Soacha, created a transitory commission to analize "the operational circumstances surrounding these events and alleged homicides that were reported."

> "The commission that was in charge of General Carlos Arturo Suárez Bustamante, chief of operations of the Military Forces in 2007 to 2008 and General Inspector of the Army in 2009, generated the so-called Suárez report, which described several cases of combat deaths reported by the Army that were denounced by people in the community as extrajudicial executions."
> "The report resulted in separation of command to 27 Army officers for corruption in intelligence expenditures that were used to pay bounties." (Final Report, Truth Commission).

Having contextualized the political scenario in which the expression "false positives" was born, we approach the concept from the linguistic analysis of the expression which has a meaning that goes beyond a simple press headline.

For Pardo (2006), this expression disseminated by the mass media "is determined by a marker of subjectivity", that is, there is in its creation a clear purpose "to show that people seemed to be linked to..." giving a certain characteristic to the individual, in this case, belonging to an illegal group, to justify the actions of the active subject. And it also has an additional linguistic burden, a "positive" is false because the objective does not "correspond to the action of killing" the subject, while, antagonistically, it can be concluded that when the "positive" is true, the homicide is considered legitimate, that is, when the deceased is an insurgent, it is positive to assassinate

> "Then in this context, this expression arises to hide the reality that state crimes are still in force, that they are a systematic, permanent reality, where the state has violated in all ways not only by killing civilians but that the state itself has participated by action or omission in crimes such as threats to civilians, selective killings, extrajudicial executions, enforced disappearances, plundering of resources, among others". (Melo Rodríguez & Rojas Mancipe, 2011, p. 129). When making a distinction of each word, from the linguistic point of view, Professor Pardo, emphasizes that "The 'false' is an attributive construction, and 'positive' shows that this person is executed on some assumptions that were believed", definition in which the subjectivity load persists in the expression itself (Melo Rodríguez & Rojas Mancipe, 2011, p. 71).

Up to this point it is clear that the concept was also used as a way to blur reality, to hide it, to disguise it. It is no coincidence that great confusion was generated from its diffusion in the media.

2. Extrajudicial Executions

Although there are pronouncements by the international community about this illegal practice, the truth is that it has received much criticism for being an ambiguous and unclear term when determining or defining in an accurate way what this criminal conduct or violation of Human Rights is, especially for violating the right to life.

The "extrajudicial execution[9] does not have an express typification;

[9] "Extrajudicial execution is a violation that can be consummated, in the exercise of the power of the State agent's position, in an isolated manner, with or without political motivation, or more seriously, as an action derived from a pattern of an institutional nature. It is usually understood that the execution derives from an intentional action to arbitrarily deprive one or more persons of their life, on

however, the Manual on the Prevention and Effective Investigation of Extrajudicial, Arbitrary and Summary Executions of the United Nations (1991), specifies the patterns of macro criminality that must concur to determine whether a criminal conduct corresponds to an extrajudicial execution" (Judgment T-535 of 2015). It is configured if an authority arbitrarily or deliberately deprives the right to "the life of a human being in circumstances that do not correspond to the legitimate use of force. In general, two fundamental elements determine the constitution of this violation of Human Rights, the first is that the conduct must be imputable to public servants, the second is given to illegitimately attempt against life; which is a right that enjoys a special regime of protection in the American Convention[10] and other international instruments, since from this the other rights of the human being are derived". (Judgment T-535 of 2015).

The real problem of these deficiencies becomes visible when punishing the perpetrators. The lack of criminalization of this crime in several countries, including Colombia, is an obstacle to investigating and convicting the perpetrators. Also, countries that have already criminalized extrajudicial execution, such as Guatemala[11], face serious legal technical problems, since once the legislator gave legal life to this type of crime, criticism arose, inasmuch as the same offense could end up concurring with conduct that is already punishable. Additionally, the criminal sanction from the responsibility could favor the perpetrators of this crime, since it is lower than that of other serious crimes attempting against life.

Other problems in Guatemalan lie is the fact that criminal offense drafted by the legislator is quite extensive and ambiguous, even including other independent criminal offenses such as "Torture and Enforced Disappearance".

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the part of State agents or private individuals under their order, complicity or acquiescence; however, both in doctrine and in some legislation, different degrees of intentionality are accepted when those responsible are members of the State security forces". Henderson, Humberto. 2006. La ejecución extrajudicial o el homicidio en las legislaciones de América Latina. IIDH Journal.

[10] "The purpose of the Inter-American Convention on Forced Disappearance of Persons is to establish guidelines to which the domestic laws of the States that are part of the Inter-American system for the protection of human rights must adhere, with respect to forced disappearance. Although it does not intend to define or regulate the content and scope of such rights, it does impose certain duties on the States, as subjects obliged to protect them. Colombia approved the Convention through Law 707 of 2001. Judgment C-580 of 2002, Judge Rodrigo Escobar Gil clarified that the Inter-American Convention on Forced Disappearance of Persons is not strictly speaking a human rights treaty, but a mechanism for the eradication of the crime. However, it has a protective objective of the essential rights of persons in such a way that, in attention to that teleological criterion, the referred treaty recognizes human rights and establishes mechanisms that contribute to a great extent to their protection. Those additional guarantees of the Convention that are not expressed in the Constitution or directly attached to it, are part of the block of constitutionality in the broad sense, that is, they constitute parameters for the interpretation of the scope of Article 12 superior.)" (Judgment C-317 of 2002, Judge Clara Inés Vargas Hernández).

[11] By means of Article 1 of Decree 48-95 of Congress of the Republic of Guatemala, approved June 15, 1995, Article 132 Bis was incorporated to Criminal Code of Guatemala, which gave life to the crime of Extrajudicial Execution.

By including private individuals, "the typical essence of the crime was distorted, since this generates confusion with respect to the protected legal right, since, being typified from an international law perspective, it was intended to protect not only the legal right to life but also to protect the citizen from the improper performance of public functions" (Constitutional Court, Ruling 205 of 2003).

To speak of extrajudicial executions in Colombia is problematic, not only because of ambiguity and lack of specificity of the concept, but also because this practice is not classified as a crime in the Colombian Criminal Code, which prevents it from being punished as a punishable conduct in the domestic criminal jurisdiction. Also, as it is conceived in international law, it would only prosecute public servants, leaving out private individuals who act with their acquiescence or on their own account as organized groups or gangs with terrorist, insurgent, or subversive purposes in the framework of an internal armed conflict.

We reiterate the difficulty of punishing this conduct in light of our domestic legal system. There is no general consensus on what can be understood as extrajudicial, summary or arbitrary executions; and, they involve various issues related to the right to life as a supreme good, which would lead us, in turn, to analyze their relationship with the legal sanction of the death penalty, not applicable in Colombia; however, this is another debate, not the subject of this article.

3. Homicide of a Protected Person

Several judicial decisions of the Council of State and others of the Constitutional Court, specifically related to incidents of direct reparation or *tutela* against judicial sentences of direct reparation, equate the extrajudicial execution with the crime enshrined in Article 135 of Law 599 of 2000, called Homicide in a Protected Person.[12]

We consider that, unlike extrajudicial execution, for a homicide of a protected person to be punishable in Colombia, the deprivation of the life of that person must have been consummated in the course of and on the occasion of the armed conflict. Likewise, it is not required that it be a state authority

[12] The concept of protected person "is not only a legal but also an ethical-political connotation or consideration. In the framework of particular situations, factually and legally defined as situations linked to armed conflicts, both external and internal, special recognition is granted to various types of persons who are in a particular situation of vulnerability: their rights are protected in a particular way according to the factual and specific situation of vulnerability. Protected persons are those to whom a particular humanitarian treaty applies, i.e., persons to whom the rules of protection stipulated in international humanitarian law apply" Vice-Presidency of Colombia (2008). Protocol for the recognition of violations of human rights and international humanitarian law, with emphasis on homicide of a protected person. Bogotá, p. 22

that arbitrarily or deliberately deprives a human being of the right to life in circumstances that do not correspond to the legitimate use of force, as prescribed by the IACHR. According to our criminal statute of limitations, it can be either a state authority or a private individual. These two differences legally place us in different punishable scenarios.

The character or condition of the victim does not directly lead to the typical adequacy of the conduct, because they are considered as protected persons "for purposes of the qualification of the conduct, members of the civilian population, persons not participating in the hostilities and civilians in the power of the adversary". (Red Cross International Committee).

The "homicide of a protected person" involves the particularities indicated not only by the "Colombian Criminal Code in its article 135", but also by international treaties that determine that persons in a state of vulnerability in an internal or international armed conflict, their rights, in a particular way, are protected "according to the factual and specific situation of that vulnerability. Protected persons are those to whom a particular humanitarian treaty applies, that is to say, persons to whom the rules of protection stipulated in international humanitarian law apply", this with respect to the nature of protection, on the other hand, the homicide of the person covered by this special protection[13] includes some particularities with respect to the criminal type such as the qualification of the active and passive subject of the conduct, which are directly related to the internal armed conflict, its governing verb is focused on "causing" death, additionally with a circumstance so that the death must be "on the occasion and in the course of the armed conflict", the material object of the conduct refers to any person protected by the IHL, and which are taxative in the Criminal Code in terms of the classification of criminal type is instantaneous execution and therefore to that result is criminally imputable.

What is relevant is that when we are faced with a homicide with these characteristics, we observe it does not have two fundamental particularities: the concealment of the victim and the refusal to acknowledge the act, as in cases of forced disappearance, and for this reason there should be no confusion between the two conducts.

[13] "In the criminal law, the legislator inserted in Article 135 the categories of persons protected by international humanitarian law, whose commission is penalized in a more rigid manner, as is well known. This incorporation is the guarantee that consists of preventing and punishing the homicide of persons who are not fighting and therefore respects the humanitarian principle as a norm of *ius cogens*, which has a conventional and customary nature in the light of International Humanitarian Law. It is important to note that the subject of protection of the code not only incorporates the integrity of the persons protected by IHL but also incorporates the integrity of the property protected by international humanitarian law, including medical, sanitary, religious, peacekeeping mission property, cultural property, facilities containing dangerous forces, humanitarian relief property and others. Thus IHL is responsible for listing various categories of property that also fall within the scope of protection of the code." (Constitutional Court of Colombia. Ruling C-291 of 2007 (Judge Manuel José Cepeda, 2007).

4. Forced Disappearance

> "The international community has pointed out that the crime of forced disappearance[14] is an affront to the conscience of the hemisphere and a grave offense of an odious nature to the intrinsic dignity of the human person, in contradiction with the principles and purposes enshrined in the Charter of the Organization of American States." (OAS, 1994). "Enforced disappearances affect the deepest values of any society respectful of the primacy of law, human rights and fundamental freedoms, and that their systematic practice represents a crime against humanity." (UN, 1992)

It is appropriate to mention what has been stated by the Constitutional Court regarding forced disappearance and the duty of protection that corresponds to the State:

> "For the Constitutional Court (Judgment C-317 of 2002, Judge Clara Inés Vargas Hernández), the international instruments in relation to human rights and, particularly, those related to forced disappearance constitute the minimum parameter of protection from which the State must orient its legislation to prevent and investigate this violation of human rights, identify and punish those responsible and ensure adequate reparation to its victims." The Judgment "concluded that the constitutional protection[15] with respect to forced disappearance in the domestic sphere is broader than that enshrined in international instruments."

Specifically, it referred that "unlike what happens with international norms on the matter, Article 12 of the Constitution does not establish a specific

[14] "The prohibition of Article 12 of the Constitution is complemented by several international instruments that enshrine obligations of States in the area of enforced disappearance. First, Article 15 of the International Convention for the Protection of All Persons from Enforced Disappearance (Approved by Colombia through Law 1418 of 2010.) enshrines the requirement to provide all possible assistance to assist victims of enforced disappearances, which includes support in the search, location and release of missing persons and, in case of death, in the exhumation, identification and restitution of their remains. In addition, Article 24 of the same Convention sets forth obligations related to the rights of victims and the search for and location of disappeared persons. Specifically: (i) to guarantee victims the right to know the truth about the circumstances of the forced disappearance, the evolution, the results of the investigation and the fate of the disappeared person (Committee on Enforced Disappearances, October 27, 2016). *Observaciones finales sobre el informe presentado por Colombia en virtud del artículo 29, párrafo 1, de la Convención*. CED/C/COL/CO/1, párr. 20, literal c). Concluding observations on the report submitted by Colombia under article 29, paragraph 1, of the Convention. CED/C/COL/CO/1, para. 20 (c); and (ii) adopt all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to search for and return their remains." (Sixth Chamber of Review of the Constitutional Court. Decision T-129 of 2022. Supporting Judge: Gloria Stella Ortiz Delgado. Bogotá, D.C.)

[15] Article 12 of the Constitution prohibits forced disappearance by establishing that no one shall be subjected to this practice or to torture or *"cruel, inhuman or degrading treatment or punishment"*. (Sixth Chamber of Review of the Constitutional Court. Ruling T-129 of 2022. Supporting Judge: Gloria Stella Ortiz Delgado).

active subject for this crime and prevents it from being conditioned as such"[16]. Likewise, "the description of the forced disappearance of the Inter-American Convention on Forced Disappearance of Persons is only a minimum of elements of the criminal type that the States must adopt internally, but it does not affect the power of these to assume greater responsibilities in the protection –internally or internationally– of the rights that are intended to guarantee through the criminalization of this conduct". (Judgement C-580 of 2002. Judge Rodrigo Escobar Gil).

Similarly, constitutional jurisprudence has indicated[17] "that the rights of victims to truth, justice and reparation are fundamental rights that derive from the right of access to the administration of justice, the right not to be subjected to cruel, inhuman or degrading treatment, as well as the State's obligation to respect and fully guarantee rights, due process and the right to an effective judicial remedy".

5. The Concealing Euphemism

The four categories analyzed have no correspondence among themselves, and they have no legal relationship since it is evident that they are different matters which are conceived as one and the same fact and to which lately other typical conducts or euphemisms have been added, or more recently as the Attorney General's Office calls them –"deaths illegitimately presented as casualties in combat by agents of the State"– the truth is that, although these labels proliferate, the judges will be the ones called upon to adapt the punishable conduct to the criminal type transgressed. The euphemism, or media construction, "false positive" is not a crime typified in the Criminal Code, nor is it an extrajudicial execution and it is not a forced disappearance, it is not a legal term that identify or typify a criminal conduct.

Analyzed the categories to determine a conduct reproached by international and national community, the disappearance of a person who has been subdued by his captors, taken out of the scope of legal protection to put in a state of defenselessness and kill, to murder and sometimes torture, denying the captors their participation in these events, are themselves macabre for any human being with a sense of respect for his fellow human beings.

Then, "false positive" was propagated as a way to distort reality, in order to legitimize the democratic security policy, to present it in the international

[16] Based on this rule, Ruling C-317 of 2002 declared the expression "*belonging to an armed group outside the law*" of Article 165, paragraph 1 of Law 599 of 2000 to be unconstitutional.

[17] Rulings C-228 of 2002, Judge Manuel José Cepeda Espinosa and Eduardo Montealegre Lynett and C-370 of 2006 Judges Manuel José Cepeda Espinosa, Jaime Córdoba Triviño, Rodrigo Escobar Gil, Marco Gerardo Monroy Cabra, Álvaro Tafur Galvis, Clara Inés Vargas Hernández.

context as a successful policy against terrorism and thus avoid international accusations of serious Human Rights violations.

In case of "false positives", not limited to the cases of the youths of Ciudad Bolivar and Soacha, "they were committed on a large scale by numerous brigades and tactical units" throughout the country. By year 2015, the Attorney General's Office had 3,700 open investigations for the same "acts committed by State agents" between 2002 and 2008.

This is an example of the handling of information and the confusion generated around the qualifiers, as noted in the report "The role of senior commanders in false positives - Evidence of responsibility of generals and colonels of the Colombian Army for executions of civilians" the issue of extrajudicial executions is used indistinctly, and, in Colombia the majority of judicial investigations in criminal jurisdiction are cases qualified as of forced disappearance.

Other examples are in the press titled as "false positives", where news is developed as extrajudicial executions and finally it is mentioned that the possible perpetrators are tried for crime of forced disappearance. In judicial sentences and degree theses from different universities, the confusion is recurrent, initially it is stated what has been known as "false positives" to end up developing what is typified as forced disappearance.

This distorted information of reality has enormous impacts on the communities and above all on the connections they have with their imaginaries, with their ways of perceiving the reality, which finally affect their decision making in ideological positions and construction of political issues.

Also, the victims or the version of their disappearance is delegitimized in front of their relatives. Those searching for the disappeared are given unfounded reasons for not advancing actions that allow their immediate search, or to justify the slow or null progress of the investigations. In other cases, they seek to discredit the direct victim by slandering his or her name or by accusing them of provoking their own disappearance, running away with a lover, or being accused of being a guerrilla or terrorist, traitors or common criminals, all as a way to justify the "victimizing" event.

The way in which the systematic practice of crime has been handled in Colombia and how it has been shown by the media and State agents, corresponds to models which have allowed impunity.

6. Security and Forced Disappearance

The National Security Doctrine, expanded and promoted by North American Government, configure the idea of "internal enemy" mainly based on

the idea that "the polarization of East and West would also demand an internal war where the enemy would be within the borders" and military force of the state should mobilize to defeat it; "under this premise in Colombia students, teachers, workers and dissidents to the regime were persecuted and forcibly disappeared, mainly in the period 1977 - 1986".

Consequently, forced disappearance can be found as a method of counterinsurgency intimidation. At the end of the 1980s some private justice groups, created under National Security Doctrine, became paramilitary groups, and with the growth of these groups in Colombia and their strengthening, the practice and execution of forced disappearance expanded from the main and medium cities to the rural sector, and it was there especially where, appealing to a "method of counterinsurgency intimidation", the paramilitary groups and similar acted militarily against the guerrillas, their supporters or sympathizers and also against the civilian population as a way of "counterinsurgency corporate mercenarism"[18]; which "is violence carried out by mercenary groups, who act in the interests of the State when it itself cannot confront the insurgency within the framework of the rule of law; in the period 1987 - 2001.

Ii is important to mention "Democratic Security Policy" based on the counterinsurgency struggle, with the aim of denying the presence of the "internal armed conflict" and also the stigmatization of "the subversive struggle as terrorist". The mutation or transformation of the enemy and its image are part of the State's intention and tendency to make the war invisible and logically to deny the "political nature of the insurgent phenomenon"; therefore, it is a form of neutralization within the so-called State crime and "of dehumanization of the effective enemy to justify a war of extermination". The denaturalization of the political vision of the conflict and of the counterpart or adversary by using the adjective "terrorist" facilitates and increases the possibility of the latter being qualified as evil and, consequently, feared and hated. In Colombia, with the publicity against "terrorism" in the event of disappearances, "the media also resorted to the presentation of the same as "false positives or extrajudicial executions", in which innocent civilians were presented as killed by the security forces and subsequently presented as guerrillas"; in 2002 - 2010. (Mejía Alfonso, 2017, pp.158).

[18] "For Franco, this category of analysis - counterinsurgent corporate mercenarism - must be understood as the expression of an alliance of dominant interests in an organic and vital link with the state apparatus, insofar as the latter (the State) is the instance that holds the directive function in the counterinsurgency struggle and whose capacities depend on the link with social forces that operate beyond its institutional materiality - some of which constitute the power of the State and other supporting sectors -". Franco. V. (2009), p. 36.

Conclusions

The cases of young people who disappeared in Soacha, Cundinamarca, were known as "false positives", which consisted of a recruiter deceiving the victims with false promises of work, using trickery or force to take them to a remote place, where "shortly after arriving, members of the National Army" murdered the victim and then manipulated the scene of events by pretending that the victim had been "legitimately discharged in the heat of combat". These victims were presented as guerrillas killed in operations by the security forces. The victims were "buried anonymously, as *N.N*., in mass graves, and the perpetrators received bonuses, permits and promotions for the results achieved in the fight against subversion".

The term false positive was propagated as a way to distort reality, to show and sell it with the sole objective of legitimizing the democratic security policy, to present it in the international context as a successful policy against terrorism and thus avoid international accusations of serious "Human Rights violations, however, State crimes" continued to be systematic and widespread.

The indiscriminate use of euphemism "false positive" denaturalizes punishable conducts, the only ones susceptible to criminal sanction, reassures society by minimizing the seriousness of the facts and seeks not only to exonerate, but also to exalt those responsible for their efforts to guarantee the maintenance of the social and legal order. This also has an impact on the processes of social mobilization aimed at achieving "truth, justice, reparation and guarantees of non-repetition", since whoever mobilizes or denounces this type of crime may in turn be a victim of these conducts, fear, and the selection of the enemy frame the direction of the language towards the achievement of this objective.

The "forced disappearance" of persons in Colombia "is a State crime" and its perpetrators resort to neutralization techniques to deny it, make it invisible or justify it as a result of the armed conformation that the country is experiencing, but above all with the intention of denying it, blurring it and trying to reduce its real magnitude and impact that it has had on Colombian society; where according to recent statistics today there are more than 170.372 direct and indirect victims of forced disappearances and the rate of impunity in these cases exceeds 90%.

The conceptual and legal management of the analyzed categories allows a real application of the law for the benefit of the victims that would allow not only their recognition but also their due judgment; as shown by the Peace Implementation Agreement that calls it as a Comprehensive System of Truth, Justice, Reparation and Non-Repetition, and which is developed according to three fundamental pillars. Ríos, J (2017) as well as, it would also propitiate the

recognition and realization of the rights of the victims of this criminal practice in Colombia, especially in terms of truth and justice because as mentioned denial prevents knowing what actually happened to them and facilitates the impunity with which their victimizers operate.

This reality in its assessment and judgment requires precision and foundation. Continuing in a swamp of confusion does not benefit the processes, the truth, the judgments, nor the people as victims or perpetrators, nor everyone, as components of a society requiring justice and truth.

The media do not comply with the criteria of social responsibility and truthfulness of information, since their massive penetration in society constitutes a mechanism that impacts the perception of reality, in this case, softening or deviating the effects that the commission of these crimes has on public opinion. It is worth mentioning that the role of the media in these cases has two aspects; one, that in view of the evidence and the repeated denunciations by local authorities and victims, they had no other choice but to disseminate the information, that is, they made known the national scale in which these violations by members of the Army were taking place; and two, the use of euphemisms constitutes a sort of cover-up complicity with the State and the perpetrating agents, to minimize the negative impact that they cause in society.

The media must return to the path of responsibility by delivering truthful and objective news to the community. They have the obligation to handle, in their products, with clarity and honesty, the concepts reviewed, since it is not correct to distort and confuse the consumers and the whole society, which requires its exercise in ethical and responsible manner.

The four categories analyzed have no correspondence among themselves, of course they have no legal relation and they are different matters which are conceived or presented as the same fact and to which lately other typical conducts or euphemisms have been added, with the intention of distorting the reality of the "crime of forced disappearance", which does not correspond to a new dynamic in the armed confrontation and its consequences, but to the continuity of a cycle of impunity perpetrated by the State with the intention of minimizing the reality of this systematic and generalized practice in Colombia.

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