

# Analysis Of State Patrimonial Liability For The Acts Of The Tax Legislator In Colombia: A Jurisprudential And Doctrinal Approach

Camilo Carlos Caballero Cortes<sup>1</sup>, Alexander Correa Reyes<sup>2</sup>, Yolanda Ospina Pacheco<sup>3</sup>

## Abstract

*This article examines the State's patrimonial liability for the acts of the tax legislator in the Colombian context. The constitutional foundations of this liability are analyzed, as well as relevant jurisprudential and doctrinal precedents. Based on the master's thesis by Camilo Carlos Caballero Cortes, titled *The State's Liability for Legislative Acts in Tax Matters: Commentary and Defense of the Goodyear vs. Congress of the Republic Judgment*, a detailed study of the jurisprudential and doctrinal evolution in this field is conducted, highlighting the criteria used to establish such liability. The methodology employed in the research is further explored, including sources of information and selection criteria. Through the analysis of specific cases and relevant judicial rulings, the results obtained are interpreted and the conclusions of the research are discussed, emphasizing the importance of jurisprudence in safeguarding citizens' rights against the State's legislative activity in tax matters. Finally, recommendations for future research in this field are provided*

**Keywords:** *State patrimonial liability, Tax legislator, Colombian jurisprudence, Constitutional law, Legal certainty.*

## Introduction

The liability of the State for the actions of the tax legislator is a highly relevant issue in the Colombian legal context. In this article, an exhaustive analysis of this figure is made, taking as a starting point the master's thesis insofar as this research provides a detailed view of how this particular form of state liability is developed and applied in the tax field.

The importance of addressing the study of the patrimonial liability of the State in the tax context lies in the need to safeguard the rights of citizens in the face of State legislative activity. In an environment where tax regulations can have a significant impact on the economy, rights, and freedoms of taxpayers, it is essential to understand how state liability is structured and applied in cases of unconstitutional or harmful tax regulations.

To that extent, this article intends to offer a detailed synthesis of the findings and conclusions obtained in the aforementioned master's thesis, as well as to reflect on the importance and implications of the State's patrimonial liability for the act of the tax legislator in the Colombian context. In addition, it is intended to provide an overview of the jurisprudential and doctrinal evolution in this field, highlighting the main challenges faced by the Colombian legal system in this matter.

---

<sup>1</sup>Master's Degree In Law With Emphasis In Administrative Law From University Of Externado.

<sup>2</sup>Master's Degree In Law, Cooperative University Of Colombia.

<sup>3</sup>Master's Degree In Law, University Of Tolima.

The analysis of the patrimonial liability of the State for the act of the tax legislator requires understanding in detail how the constitutional and legal principles are developed and applied in this field, in such a way as to examine how the liability of the State is determined when tax regulations are enacted that turn out to be unconstitutional or generate economic damages to taxpayers, as well as to identify the jurisprudential criteria that guide such determinations.

Likewise, this study explores the historical and jurisprudential evolution of the State's patrimonial liability for the actions of the tax legislator in Colombia. From the first rulings that addressed this issue to the most recent pronouncements of the High Courts, it will analyze how the interpretation and application of this figure have evolved in the Colombian legal context, as well as the debates and controversies that have arisen around it.

This article seeks, therefore, to contribute to the academic and legal debate on the liability of the State in the tax field, providing a rigorous and updated analysis of this complex matter. The aim is to offer elements that may enrich the understanding of the challenges and dilemmas faced by the Colombian legal system in the protection of taxpayers' rights in the face of the State's legislative activity in tax matters.

### **Theoretical framework**

The concept of patrimonial liability of the State is based on the obligation of the State to repair the damages caused to individuals in the exercise of their functions. According to García and Leiva (2017), the patrimonial liability of the State comes from a judgment of the conduct of the public entity that is the object of the lawsuit, of the incidence that its behavior had in the production of damage, which implies that the liability of the State is not limited only to cases of jurisdictional error or unjustified delay in the administration of justice, but covers any state action that causes damage to citizens.

Botero (2007) states, in this regard, that this may derive from licit or illicit conduct of the public entity being sued, which means that the State may be liable even in those cases in which its actions are by the law, as long as such actions cause damage to a private party. In this way, it is recognized that the liability of the State is not limited by the principle of legality, but covers any action that generates damage.

Along the same lines, Tobo (2012) emphasizes that the State's patrimonial liability is a fundamental guarantee for citizens since it allows them to demand reparation when they suffer damage as a result of State action. As can be seen, the liability of the State not only has a legal basis but also an ethical one, since it seeks to guarantee the protection of the rights of citizens against state power. This perspective highlights the importance of the concept of State liability in guaranteeing an effective rule of law.

On the other hand, the constitutional foundations of State liability in Colombia are closely linked to the principle of legality and respect for the fundamental rights enshrined in the Constitution. According to Bernal (2005), the Political Constitution of Colombia establishes that "individuals have the right to be compensated for the anti-juridical damages attributable to them, caused by the action or omission of the public authorities" (1991, art. 90). In other words, this principle enshrines the right of citizens to be compensated for the damages they suffer as a consequence of state action, which constitutes the legal basis of the State's patrimonial liability in the country.

In addition to the principle of legality, the liability of the State in Colombia is based on the protection of fundamental rights enshrined in the Constitution. According to Correa (2015), constitutional jurisprudence has recognized that "the liability of the State is a guarantee of protection of the fundamental rights of citizens" (p. 22), which implies that the State must respond for damages caused to individuals in the exercise of their functions, especially when constitutional rights are violated. This broad conception of liability of the State reflects the importance of the protection of human rights in the Colombian legal system.

It should be noted that the responsibility of the State in Colombia is also based on the principle of justice and equity, which is why M'Causland (n.d.) warns that “the responsibility of the State seeks to restore the balance broken by the State's actions, thus ensuring justice for the affected citizens” (p. 45). This principle implies, therefore, that the responsibility of the State not only has a legal and constitutional basis but also an ethical one since it seeks to repair the damages caused to individuals fairly and equitably. In this sense, the responsibility of the State is presented as an indispensable mechanism to guarantee equality and the protection of the rights of all citizens.

Another theoretical aspect worth mentioning is that the jurisprudential and doctrinal background on the liability of the State for the act of the tax legislator has been the subject of exhaustive analysis in the academy and the Colombian judicial practice. Pimiento (2016) highlights that the patrimonial liability of the State is not only limited to cases of failure in service but may also arise as a consequence of the creation of unconstitutional tax rules. This broad view of state liability has been supported by Colombian jurisprudence, which has recognized the possibility of suing the State for damages caused by the enactment of tax laws contrary to the Constitution.

Regarding the jurisprudential background, the Council of State has issued several rulings that address the liability of the State for the act of the tax legislator. For example, in the judgment of March 26, 2014, registered 28741, the Third Section recognized that the creation of an unconstitutional tax can generate anti-judicial damage that must be repaired by the State. This jurisprudential precedent has laid the groundwork for future lawsuits related to the liability of the State for legislative activity in tax matters.

In addition to the jurisprudence, the doctrine has also contributed to the study of the liability of the State for the actions of the tax legislator. Along these lines, García and Leiva (2017) have analyzed this issue from a comparative perspective, examining how other countries have addressed the problem of the State's asset liability in the context of legislative activity, so their research has provided valuable elements that can be applied to the analysis of State liability in Colombia.

### **Methodology**

The methodology used combines documentary analysis and exhaustive bibliographic review. First, a detailed analysis of the provided master's thesis was carried out, which served as the main source of information for this article. Taking as a basis what was done by Caballero (2017), it constitutes a fundamental reference in the study of the patrimonial liability of the State due to the fact of the tax legislator in Colombia.

Thus, the methodology used also included the review of relevant jurisprudence of the Council of State and the Colombian Constitutional Court, as well as the consultation of academic articles and books specialized in administrative and tax law. This bibliographic review made it possible to contextualize the topic of study, identify the main debates and theoretical approaches, and analyze the different doctrinal positions regarding the liability of the State for the legislative act in tax matters.

As for the sources of information, priority was given to official documents such as court rulings, laws, and decrees related to the Colombian tax system. Works by prominent authors in the field of administrative and constitutional law were also consulted, such as Eduardo García (2005), Correa (2015), and Aroca (2005), among others. These sources provided a solid theoretical framework for our analysis and allowed us to understand in depth the complexity of the topic addressed.

Regarding the criteria for selecting the information, the relevance and timeliness of the documents consulted were prioritized, which is why those documents that offered a comprehensive and updated perspective on the State's economic liability in the field of tax

legislation were taken into consideration. In addition, special attention was paid to works and rulings that addressed specific cases and legal controversies relevant to the object of study.

## **Results**

To deepen the analysis of what has been raised in this article, and bearing in mind what Caballero (2017) expressed about the State's patrimonial liability for the act of the legislator in Colombia, it is essential to highlight the detailed approach that the author gives to the jurisprudential and doctrinal evolution in this field. Indeed, Caballero (2017) conducts an exhaustive review of Colombian case law on tax matters, identifying the different criteria and arguments used by the courts to establish the liability of the State for legislative acts.

In this sense, it highlights the importance of analyzing how court rulings have interpreted and applied the relevant constitutional and legal principles to determine the State's patrimonial liability. As García (2002) points out, in his article on the principle of protection of legitimate expectations as a justification for the State's asset liability, it is essential to consider how the courts have interpreted this principle in the specific context of tax legislation, an interpretation that may vary depending on factors such as the protection of citizens' fundamental rights and legal certainty in the tax sphere.

In addition, Caballero (2017) examines how legal doctrine has addressed the issue of state liability for the act of the legislator in tax matters, an aspect already addressed by Hernández (1994), who analyzed the typology of constitutional judgments with tax effects and their impact on state liability, becoming a doctrinal approach that complements the jurisprudential analysis by providing a theoretical and conceptual perspective on the foundations of state liability in the tax field.

According to the above, the detailed analysis of the jurisprudential and doctrinal evolution carried out by Caballero (2017) provides a deep understanding of the criteria and arguments used to establish the State's patrimonial liability for the act of the legislator in Colombia, an approach that allows identifying trends and challenges in the application of state liability in the tax context, thus contributing to the development of administrative and constitutional law in the country.

It should be emphasized that Caballero (2017) evidences a thorough and detailed interpretation of the results derived from the analysis of specific cases and relevant court decisions, which facilitates a deep understanding of how Colombian jurisprudence has contributed to the consolidation of the principles and criteria applicable to the liability of the legislating State in the tax field. As Botero (2007) points out in his study on the liability of the legislator, case law plays a fundamental role in interpreting and applying legal provisions in specific cases, thus setting precedents that guide future judicial decisions. In this sense, Caballero's (2017) exhaustive interpretation of case law allows identifying trends and patterns in the determination of state liability in the tax context.

In addition, Caballero (2017) highlights the importance of case law in delimiting the scope of the liability of the legislating State. As mentioned by Céspedes (2017), in his analysis of lawful damage and the right to strike, case law plays a crucial role in establishing clear and consistent criteria to determine when the State is liable for legislative acts that cause harm to citizens, a jurisprudential perspective that contributes to legal certainty and the strengthening of the rule of law by establishing clear and predictable parameters for State liability in the tax sphere.

In this regard, it is worth commenting that the exhaustive interpretation of Colombian case law carried out by Caballero (2017) in his master's thesis highlights the importance of this body of case law in the consolidation of the principles and criteria applicable to the liability of the legislating State in the tax sphere, as well as in the definition of the limits and scope of such liability.

However, the reflection goes further in that the discussion on the conclusions of the thesis offers a profound reflection on the relevance and transcendence of judicial decisions in the protection of the rights of citizens in the face of the legislative activity of the State in tax matters. As García (2002) argues, the principle of protection of legitimate expectations is fundamental in constitutional jurisprudence to ensure legal certainty and the protection of citizens' rights against possible arbitrariness of the State in the development and application of tax rules. In this sense, jurisprudence plays a crucial role in the defense of constitutional principles and the preservation of the rule of law in the tax sphere.

It also highlights the importance of guaranteeing legal certainty and the protection of constitutional principles in the development and application of tax rules, as well as in the determination of the patrimonial liability of the State for possible damages caused by the issuance of unconstitutional laws or contrary to fundamental rights. As mentioned by Henao (2015), the liability of the State in the tax sphere must be in line with the constitutional principles of legality, equity, and justice, thus ensuring respect for the fundamental rights of citizens. In this context, constitutional jurisprudence plays a fundamental role in establishing the limits and scope of state responsibility and ensuring the protection of citizens' rights against the legislative activity of the State.

Thus, it underlines the importance of judicial decisions in the protection of the rights of citizens in the tax field and highlights the need to ensure legal certainty and respect for constitutional principles in the development and application of tax rules, as well as in the determination of the State's liability, which allows inferring that this discussion on the topic addressed constitutes a significant contribution to the Colombian legal field by offering a detailed and rigorous analysis on the liability of the State for the act of the legislator in the tax context. In the words of Núñez (2011), the contribution of this study lies in its ability to identify and analyze the different dimensions and criteria applicable to the liability of the legislating State in tax matters, which provides a comprehensive and well-founded view on this issue of legal relevance.

The conclusions obtained by Caballero (2017) offer important orientations for future jurisprudential development in Colombia in matters of State liability for the act of the legislator. According to Ramos (2012), the comprehensive analysis of case law and doctrine conducted in the thesis provides a solid basis for the construction of a coherent and effective regulatory framework that ensures respect for the rights of citizens in the tax sphere, a key aspect given the complexity and sensitivity of tax issues and the need to ensure the protection of the fundamental rights of taxpayers.

In addition, Caballero's (2017) research offers a critical and reflective perspective on the challenges and dilemmas faced by the State in its legislative function and its responsibility toward citizens. In this regard, Pimiento (2016) states that it is essential to promote a culture of transparency and respect for constitutional principles in the legislative activity of the State, which contributes to strengthening the rule of law and democratic legitimacy. From this perspective, Caballero's (2017) research not only offers a deep and grounded analysis of the liability of the State for the act of the legislator in Colombia but also provides valuable guidance for future jurisprudential development and the construction of a solid normative framework that guarantees respect for the rights of citizens in the tax context.

### **Conclusions**

The conclusions drawn from the above, especially about the master's thesis on the patrimonial liability of the State for the act of the legislator in Colombia, offer a synthesis of the most relevant points discussed in the article, highlighting the importance of jurisprudence and doctrine in the evolution of this field of administrative law. According to García (2005), the responsibility of the legislating State is a complex issue that requires a detailed analysis of the different criteria and principles applicable, and the research conducted offers a significant

contribution in this regard by critically examining the jurisprudential and doctrinal evolution in Colombia.

In terms of contribution to the field of study of the patrimonial liability of the State in Colombia, the thesis highlights the importance of establishing clear and consistent criteria to determine the liability of the State for legislative acts in tax matters. According to Correa (2015), the liability of the State for the act of the legislator is a topic of great relevance in the Colombian legal field, and the research conducted provides a solid basis for the future development of this field, as well as for the formulation of public policies and judicial decisions.

As for recommendations for future research on this topic, it is suggested to deepen the analysis of specific cases and the comparative study of jurisprudence and doctrine in other Latin American countries. According to Hernandez (1994), comparative analysis is key to enriching the understanding of the responsibility of the State for the act of the legislator and to identify good practices and lessons learned in other legal contexts. In addition, it is recommended to investigate the impact of judicial decisions on legislative activity and on the protection of citizens' rights, as well as to explore new theoretical and methodological perspectives to address this complex issue.

As can be seen, the analysis developed offers a significant contribution to the field of study of the patrimonial liability of the State for the act of the legislator in Colombia by providing a detailed and rigorous analysis of the jurisprudence and doctrine in this area, in such a way that the conclusions obtained offer important guidelines for the future development of this field and for the formulation of public policies and judicial decisions that guarantee respect for the fundamental rights of citizens in the tax context.

## References

- Aroca, C. (2005). Principio de reserva de ley en materia tributaria. Bogotá: Universidad Externado de Colombia.
- Bernal, C. (2005). El Derecho de los derechos. Bogotá: Universidad Externado de Colombia.
- Botero, L. (2007). Responsabilidad Patrimonial del Legislador. Bogotá: Legis, Universidad del Rosario.
- Céspedes, C. (2017). El daño lícito y el Derecho de Huelga. *Revista de Derecho*, 47, 250-289.
- Correa, R. (2015). Límites jurisprudenciales a la responsabilidad patrimonial del Estado. En Henao Juan y Ospina Andrés. La responsabilidad extracontractual del Estado ¿Qué? ¿Por qué? ¿Hasta dónde? XVI Jornadas Internacionales de Derecho Administrativo. Bogotá: Universidad Externado de Colombia, pp. 849.
- García, E. (2002). El principio de protección de la confianza legítima como supuesto título justificativo de la responsabilidad patrimonial del Estado legislador. *Revista de Administración Pública*, 159, 173-206.
- García, E. (2005). Sobre la Responsabilidad Patrimonial del Estado como autor de una ley Declarada inconstitucional. *Revista de Administración Pública*, 166, 99-147.
- García, M. y Leiva, E. (2013). La responsabilidad patrimonial del Legislador en Colombia, Francia y España. *Revista Derecho del Estado*, 39, 267-300.
- Hernández, R. (1994). La tipología de las sentencias constitucionales con efectos fiscales. *Revista Española de Derecho Constitucional*, 41, 225-245.
- M'causland, M. (s.f.) Responsabilidad objetiva del Estado: tendencias, deseos y realidades. En: La responsabilidad extracontractual del Estado – XVI Jornadas Internacionales de Derecho Administrativo. Bogotá: Universidad Externado de Colombia.
- Pimiento, J. (2016) Responsabilidad o solidaridad. El fundamento del deber de reparar en el ámbito de la responsabilidad extracontractual del Estado. *Revista de Derecho Público*, 36, 3-43.
- Ramos, R. (2012) Responsabilidad del Legislador en Colombia por derogación de normas tributarias. Bogotá: Universidad del Rosario.
- Caballero, J. (2012) La Corte Constitucional y el Control de Constitucionalidad en Colombia. Bogotá: Ediciones Jurídicas Gustavo Ibáñez.

## Anexos

- Excerpt from the Judgment of the Council of State (Section 3a) of October 18, 1990, rad. 5396.
- Excerpt from the Judgment of the Council of State (Section 3a) of February 2, 1995, rad. 9273.
- Excerpt from the Judgment of the Council of State (Section 3a) of December 13, 2001, rad. 20678.
- Excerpt from the Judgment of the Council of State (Section 3a) of September 26, 2002, rad. 20945.
- Excerpt from the Judgment of the Council of State (Section 3a) of May 15, 2003, rad. 23245.
- Excerpt from the Judgment of the Council of State (Section 3a) of April 28, 2010, rad. 18530.
- Excerpt from the Judgment of the Council of State (Section 3a) of April 24, 2013, rad. 28221 and 27720.
- Excerpt from the Judgment of the Council of State (Section 3a) of March 26, 2014, rad. 28741.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of February 23, 2012, rad. 24665.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of January 29, 2014, rad. 26689.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of April 9, 2014, rad. 28811.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of April 29, 2015, rad. 28765.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of June 11, 2014, rad. 26702.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of June 11, 2014, rad. 30212.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of May 13, 2015, rad. 26692.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of May 27, 2015, rad. 29901.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of June 24, 2015, rad. 29148.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of July 16, 2015, rad. 31175.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection A) of July 16, 2015, rad. 29601.
- Excerpt from the Judgment of the Council of State (Section 3a, Subsection B) of March 27, 2014, rad. 27 364.Extracto de la Sentencia del Consejo de Estado (Sección 3a, Subsección B) del 31 de agosto de 2015, rad. 22637.
- Extracto de la Sentencia del Consejo de Estado (Sección 3a, Subsección B) del 17 de junio de 2015, rad. 31073.
- Extracto de la Sentencia del Consejo de Estado (Sección 3a, Subsección C) del 24 de octubre de 2013, rad. 26690.
- Extracto de la Sentencia del Consejo de Estado (Sección 3a, Subsección C) del 26 de marzo de 2014, rad. 28741.
- Extracto de la Sentencia del Consejo de Estado (Sección 3a, Subsección C) del 20 de octubre de 2014, rad 29355.
- Extracto de la Sentencia del Consejo de Estado (Sección 3a, Subsección C) del 3 de noviembre de 2016, rad. 29996.
- Extracto de la Sentencia de tutela del Consejo de Estado (Sección 3a, Subsección C) del 26 de enero de 2017, expediente 11001-03-15-000-2016-01752-00.
- Extracto de la Sentencia del Consejo de Estado (Sección 4a) del 3 de septiembre.