

[Home](#)   [Country of Origin Information](#)   Responses to Information Requests

# Responses to Information Requests

---

Responses to Information Requests (RIR) are research reports on country conditions. They are requested by IRB decision makers.

The database contains a seven-year archive of English and French RIR. Earlier RIR may be found on the [UNHCR's Refworld website](#).

Please note that some RIR have attachments which are not electronically accessible here. To obtain a copy of an attachment, [please e-mail us](#).

## Related Links

- [Advanced search help](#)

1 May 2018

### COL106087.E

Colombia: Investigation of criminal complaints, including time limits, expiry of criminal proceedings, and archival of complaints; information on the Office of the Attorney General's database used to consult the status of a criminal complaint, including the definition of the different statuses (2017-April 2018)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

## 1. Filing a Complaint

Articles 66 and 69 of the Code of Criminal Procedure (*Código de Procedimiento Penal*, CPP), as posted on the website of the Senate of Colombia, indicate the following:

ARTICLE 66. RESPONSIBILITY FOR AND OBLIGATION TO PROSECUTE. The State, through the Office of the Attorney General of the Nation, is obliged to bring criminal proceedings and to conduct investigations into acts that are punishable by

law, *ex officio*, or when it is made aware of such acts by means of a report, special request, complaint or any other means, with the exceptions provided for in the Political Constitution and in this Code.

Consequently, the State may not suspend, interrupt or waive criminal prosecution, except where the law provides for application of the principle of discretion as regulated within the framework of the State's criminal policy, which shall be subject to a review of legality by the supervisory judge [*juez de control de garantías*].

Where the conversion of public criminal proceedings to private criminal proceedings is authorized, and for so long as they are in effect, the investigation and prosecution shall be carried out by the private prosecutor under the terms of this Code.

...

#### ARTICLE 69. REQUIREMENTS FOR THE REPORT, COMPLAINT OR REQUEST.

The report, complaint or request shall be made orally or in writing, or by any technical means that allows the author to be identified, with the date and time of submission recorded, and shall contain a detailed account of the facts known to the complainant. He/she shall state whether, to his/her knowledge, the same facts have already been brought to the attention of another official. The person receiving the report shall warn the complainant that false reporting is subject to criminal liability.

In any case, unfounded complaints will not be accepted. [1]

The complaint may be expanded upon only once, at the request of the complainant or of the competent official, on points of importance for the investigation.

Anonymous submissions that do not provide evidence or specific information to guide the investigation shall be set aside by the relevant prosecutor. (Colombia 2004)

In correspondence with the Research Directorate, a Bogotá-based lawyer specializing in corporate penal law indicated that the determination of a complaint as being [translation] "false" falls under the competency of a trial judge (*juez de conocimiento*), and not the Attorney General's Office (Fiscalía General de la Nación, FGN) (Lawyer in Bogotá 10 Apr. 2018). The same source explained that since the role of the FGN is the prosecution of criminal offenses,

[translation]

the FGN would be only responsible for commencing a criminal proceeding to demonstrate to the trial judge that the complainant, acting willfully, filed a complaint under oath about: (i) an offense that did not exist, or (ii) a person as being the author or participant of an offense that he or she did not commit or in which he or she did not participate. (Lawyer in Bogotá 10 Apr. 2018)

For additional information on the requirements and procedures to submit a complaint to the police, the FGN, and the Office of the Ombudsperson (Defensoría del Pueblo), see Response to Information Request COL105772 of May 2017.

## 2. Time Limits

Articles 175 and 294 of the CPP indicate the following:

ARTICLE 175. DURATION OF THE PROCEEDINGS. The term available to the Public Prosecutor's Office to file an indictment or request a stay of execution may not exceed ninety (90) days counted from the day following the filing of the charges, except as provided in Article 294 of this Code.

That term shall be one hundred and twenty (120) days when there are concurrent offences, when there are three or more defendants, or in the case of offences under the jurisdiction of the Specialized Criminal Circuit Judges.

The preparatory hearing shall be conducted by the trial judge no later than forty-five (45) days after the arraignment hearing.

The oral hearing shall begin within forty-five (45) days after the conclusion of the preparatory hearing.

ADDITIONAL ARTICLE. The Public Prosecutor's Office shall have a maximum term of two years from the date of receipt of the *notitia criminis* to file charges or to order the investigation set aside, with due grounds. This maximum term shall be three years when there are concurrent offences, or in the event of three or more defendants. In the case of investigations into offences within the jurisdiction of the specialized criminal circuit judges, the maximum term shall be five years. [2]

ADDITIONAL ARTICLE. In proceedings that fall within the jurisdiction of the specialized criminal circuit judges for offences against the Public Administration and against economic assets involving State property, and in respect of which preventive detention is appropriate, the foregoing terms shall be doubled where there are three (3) or more defendants or offences under investigation.

...

ARTICLE 294. EXPIRY OF THE TERM. Upon expiry of the period provided for in Article 175, the public prosecutor must apply for a stay of execution or file an indictment before the trial judge.

Failure to do so will result in loss of power to take further action, and the prosecutor's respective superior shall be immediately informed thereof.

In such an event, the superior shall appoint a new prosecutor to take the corresponding decision within sixty (60) days from the time the case is assigned to him/her. That term shall be ninety (90) days when there are concurrent offences, when there are three or more defendants, or when the prosecution of any of the offences falls within the jurisdiction of the specialized criminal circuit judges.

Upon expiry of the period, if the situation remains undefined, the defendant shall be immediately released, and the defence or Public Prosecutor's Office shall ask the trial judge to stay the proceedings. (Colombia 2004)

The lawyer in Bogotá indicated that the assignation of a complaint for investigation (*notitia criminis*) is done by the FGN within pre-established timelines that differ from office to office, depending on the caseload (Lawyer in Bogotá 10 Apr. 2018). The average timeframe in Bogotá is 15 days (Lawyer in Bogotá 10 Apr. 2018). In a telephone interview with the Research Directorate, a Barranquilla-based lawyer specializing in criminal law indicated that the FGN takes an average of one week to assign the criminal complaint to a prosecutor, as long as there are no persons detained in relation to the complaint (Lawyer in Barranquilla 2 Apr. 2018). If a person is detained, the file is assigned immediately to a prosecutor (Lawyer in Barranquilla 2 Apr. 2018).

Sources indicated that the time limits provided in article 175 of the CPP are not always respected by FGN prosecutors (Lawyer in Bogotá 10 Apr. 2018; Lawyer in Barranquilla 2 Apr. 2018) due to the limited number of prosecutors and the high

caseload (Lawyer in Barranquilla 2 Apr. 2018). According to the lawyer in Barranquilla, FGN prosecutors are not subjected to sanctions if they exceed these limits (Lawyer in Barranquilla 2 Apr. 2018). The lawyer in Bogotá explained that decisions on *notitia criminis* are not necessarily taken within these time limits and when these limits expire, the complainant can request the re-assignment of the case to another prosecutor (Lawyer in Bogotá 10 Apr. 2018). The lawyer in Barranquilla indicated that in cases where the criminal complaint involves a detained person, the limits are [translation] "more inflexible" because a breach of these limits can lead to the release of the detained person and administrative sanctions against the prosecutor (Lawyer in Barranquilla 2 Apr. 2018).

The lawyer in Barranquilla indicated that, in practice, the time limit that a prosecutor has to investigate a complaint usually goes up to the statute of limitation for criminal proceeding, after which the prosecutor can be subjected to sanctions (Lawyer in Barranquilla 2 Apr. 2018). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Chapter 5 of the Colombian Criminal Code (*Código Penal*) includes information on the statute of limitation for criminal proceedings (Colombia 2000). An English translation of articles 83 to 91 of the Criminal Code is attached to this Response.

### **3. Setting Aside (*archivo*) a Complaint**

The CPP indicates the following:

ARTICLE 79. SETTING ASIDE OF PROCEEDINGS. When the Public Prosecutor's Office becomes aware of a matter in respect of which there are determined to be no factual grounds or circumstances that allow it to be classified as an offence, or that indicate its possible existence as such, it shall order the proceedings set aside.

However, if new evidence emerges, the investigation shall be resumed until the criminal proceedings have been completed. [3] (Colombia 2004)

According to the lawyer in Barranquilla, the [translation] "determination" process carried out by the FGN "consists of an investigation that includes the verification of the evidence to determine if the complaint is legitimate, if there are factual bases to

characterize the crime as such, and whether there is the possibility to lay charges" (Lawyer in Barranquilla 2 Apr. 2018). The lawyer in Bogotá indicated that the "determination" consists of "verifying that there are no minimum grounds to initiate prosecution" (Lawyer in Bogotá 10 Apr. 2018). The lawyer in Bogotá indicated that, according to jurisprudence from the Constitutional Court of Colombia (Corte Constitucional de Colombia), "this scenario takes place when the prosecutor assigned to the case cannot find objective elements that allow him or her to classify the matter of the complaint as a criminal offense" (Lawyer in Bogotá 10 Apr. 2018). The same source explained that the absence of these "objective elements" is due to two reasons: first, that the prosecutor could establish that the alleged offence did not exist; second, that the prosecutor established that the "offense" did occur but it does not constitute an offense sanctioned under Colombian penal law (Lawyer in Bogotá 10 Apr. 2018). According to the lawyer in Bogotá, prosecutors have "autonomy" to decide whether to set aside a complaint or not (Lawyer in Bogotá 10 Apr. 2018).

Sources indicated that a decision to set aside a complaint is communicated to the complainant usually through a telegram sent to the contact information that he or she had provided (Lawyer in Bogotá 10 Apr. 2018; Lawyer in Barranquilla 2 Apr. 2018). The same sources stated that the communication indicates that the complaint was set aside and provides the contact information of the office of the FGN where the complainant can go to learn about the reasons for the decision (Lawyer in Bogotá 10 Apr. 2018; Lawyer in Barranquilla 2 Apr. 2018). According to the lawyer in Bogotá, the communication includes an appointment with the date and time to meet with the prosecutor (Lawyer in Bogotá 10 Apr. 2018). During the appointment, the prosecutor will produce the order that set aside the complaint and explain the reasons for doing so (Lawyer in Bogotá 10 Apr. 2018). The order is signed by the complainant and he or she receives a copy (Lawyer in Bogotá 10 Apr. 2018). According to the lawyer in Barranquilla, the complainant can request a copy of the decision (Lawyer 2 Apr. 2018).

### **3.1 Disputing a Decision to Set Aside a Complaint**

According to decision T-520A of 2009 (*Sentencia T-520A/09*) by the Constitutional Court of Colombia, a decision made by a FGN prosecutor to set aside a complaint is an [translation] "order" and, as such, there are no recourses available to dispute such decision (Colombia 31 July 2009). The same Court indicated, in the

2005 decision C-1154/05 (*Sentencia C-1154/05*), that if new evidence emerges, the victim can request the prosecutor to reopen the case (Colombia 15 Nov. 2005). Sources indicate that if the case is not reopened by the FGN, the complainant can challenge the prosecutor's decision before a supervisory judge (*juez de control de garantías*) (Colombia 15 Nov. 2005; Lawyer in Barranquilla 2 Apr. 2018; Lawyer in Bogotá 10 Apr. 2018). According to the lawyer in Barranquilla, if the case is not reopened by the supervisory judge, the complainant can file an [translation] "action of protection" (*acción de tutela*) (Lawyer in Barranquilla 2 Apr. 2018). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Article 86 of the Political Constitution of Colombia (*Constitución Política de Colombia*) indicates the following regarding the action of protection:

#### Article 86

Every person has [recourse to] the action of protection [*acción de tutela*] to claim before the judges, at any time or place, through a preferential and summary proceeding, for themselves or by whoever acts in their name, the immediate protection of their fundamental constitutional rights whenever these [are] consequently damaged or threatened by the action or omission of any public authority.

The protection [*protección*] will consist of an order so that [the party] from whom the protection [*tutela*] is solicited, acts or refrains from it. The decision, which must be of immediate compliance, may be challenged before the competent judge, and in any case, the latter may return it to the Constitutional Court for its subsequent [*eventual*] revision.

This action will proceed only when the affected [party] does not dispose of another means of judicial defense, except when the former is used as a transitory mechanism to avoid an irreversible harm.

In no case may more than ten days elapse between the request for protection [*tutela*] and its resolution.

The law will establish the cases in which the action of protection [*tutela*] proceeds against individuals entrusted with the provision of a public service or whose conduct affects seriously and directly the collective interest, or in respect of whom the applicant finds himself in a state of subordination or defenselessness. (Colombia 1991, emphasis in original)

#### 4. Database to Consult the Status of a Complaint

The website of the FGN provides a section to consult the status of a criminal complaint called [translation] "Cases Registered in the Database of the Accusatory Oral Criminal System" (Casos registrados en la base de datos del Sistema Penal Oral Acusatorio, SPOA) (Colombia n.d.). The status can be checked by introducing the complaint number, which consists of 21 digits (Colombia n.d.). According to the lawyer in Bogotá, the results available in the field "Status of the case" (Estado de caso) are "Active" (Activo) or "Inactive" (Inactivo) (10 Apr. 2018). The same source indicated that the result "Active" indicates that the case is undergoing "inquiry, investigation or trial," and the result "Inactive" indicates that the case has been "set aside, precluded, completed" (Lawyer in Bogotá 10 Apr. 2018).

In correspondence with the Research Directorate, a representative from the FGN indicated that "Inactive"

[translation]

[g]enerally ... appears when the prosecutor investigating the complaint ceases to work on the file either because the complaint was archived, a sentence has been rendered, or a preclusion was requested, which means that the investigation cannot always be restarted.

An archived investigation can be restarted if it meets some of the requirements set forth in Article 79 of the [CPP]. (Colombia 5 Dec. 2017)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

#### Notes

[1] The version of the CPP provided by the Senate of Colombia contains the following note for article 69:

Constitutional Court

Subparagraph declared **CONDITIONALLY CONSTITUTIONAL** by the Constitutional Court by means of Ruling C-1177-05 of 17 November 2005, Judge-Rapporteur Dr. Jaime Córdoba Triviño, [*translation*] “on the understanding that rejection of the complaint only applies when the act did not exist, or does not have the characteristics of an offence. This decision, duly reasoned, must be taken by the prosecutor and communicated to the complainant and the Public Prosecutor's Office. (Colombia 2004, emphasis in original)

[2] The version of the CPP provided by the Senate of Colombia contains the following note for article 175:

Constitutional Court

- Additional article of the text amended by Law 1453 of 2011 declared **CONSTITUTIONAL**, by virtue of the charges analyzed, by the Constitutional Court by means of Judgment C-893-12 of 31 October 2012, Judge-Rapporteur Dr. Luis Guillermo Guerrero Pérez.

The editor points out:

[*translation*] “... the establishment of time limits for this phase of the criminal procedure does not eliminate the investigative powers and functions of the Attorney General's Office; on the contrary, it encourages said Office to carry it out diligently and efficiently; nor does it affect the rights of victims to truth, justice and reparation, in that it obliges the judicial authorities to see that those rights are realized within short and precise periods. And, although expiry of the time limit may eventually cause proceedings to be set aside, such a decision must be justified on the basis of the cases provided for in Article 79 of the CPP, and provision may be made for reopening of the case where there is merit in so doing.” (Colombia 2004, emphasis in original)

[3] The version of the CPP provided by the Senate of Colombia contains the following note for article 79:

## Constitutional Court

- The Constitutional Court declared itself INELIGIBLE to rule on the second paragraph of this article, due to unsuitability of the claim, by means of Judgment C-497-15 of 5 August 2015, Judge-Rapporteur Dr. María Victoria Calle Correa.
- Article declared CONDITIONALLY CONSTITUTIONAL by the Constitutional Court by means of Judgment C-1154-05 of 15 November 2005, Judge-Rapporteur Dr. Manuel José Cepeda Espinosa, [*translation*] “on the understanding that the phrase “factual grounds or circumstances that allow it to be classified as an offence” corresponds to objective categorization, and that the decision of the prosecutor must be duly reasoned and communicated to the complainant and the Public Prosecutor's Office, that they might exercise their rights and functions.”

The editor further points out the following:

[*translation*] “It should likewise be stressed that victims are entitled to request resumption of the investigation and to provide new evidence for reopening the investigation. Such a request may be disputed between the Public Prosecutor’s Office and the victims, and the request may be denied. In this event, given that the rights of the victims are compromised, the supervisory judge may intervene. It should be clarified that the Court is not ordering review by the supervisory judge; rather, it is pointing out that when there is a dispute as to resumption of the investigation, victims are not prevented from turning to the supervisory judge. (Colombia 2004, emphasis in original)

## References

Colombia. 5 December 2017. Fiscalía General de la Nación (FGN). Correspondence from a representative to the Research Directorate.

Colombia. 31 July 2009. Corte Constitucional de Colombia. *Sentencia T-520A/09*. [Accessed 24 Apr. 2018]

Colombia. 15 November 2005. Corte Constitucional de Colombia. *Sentencia C-1154/05*. [Accessed 24 Apr. 2018]

Colombia. 2004. *Ley 906 de 2004, Código de Procedimiento Penal*. Excerpts translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 14 Mar. 2018]

Colombia. 2000. *Ley 599 de 2000, Código Penal*. Excerpts translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 14 Mar. 2018]

Colombia. 1991 (amended 2017). Political Constitution of Colombia of 1991. Translated by Anna I. Vellvé Torras, J. J. Ruchti, and Maria del Carmen Gress. In *HeinOnline World Constitutions Illustrated*. 2018. Edited by Jefri Jay Ruchti. Getzville, New York: William S. Hein & Co., Inc.

Colombia. N.d. Fiscalía General de la Nación (FGN). "Consulte el estado de su denuncia." [Accessed 21 Mar. 2018]

Lawyer, Barranquilla. 2 April 2018. Telephone interview with the Research Directorate.

Lawyer, Bogotá. 10 April 2018. Correspondence with the Research Directorate.

## Additional Sources Consulted

**Oral sources:** 15 lawyers specializing in criminal law; 4 professors of criminal law; Colombia – Fiscalía General de la Nación; Universidad de Medellín – Legal Clinic.

**Internet sites, including:** Colombia – Policía Nacional; *ecoi.net*; *El Colombiano*; *El Mundo*; *El País*; *El Tiempo*; *Factiva*; *Semana*; UN – Refworld.

## Attachment

Colombia. 2000. *Ley 599 de 2000, Código Penal*. Excerpts translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 14 Mar. 2018]

**Date modified:**

2018-06-25















