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ORIGINAL

The expert opinion in the administrative contentious jurisdiction in accordance with law 2080 of 2021

El dictamen pericial en la jurisdicción contenciosa administrativa de conformidad con la ley 2080 de 2021

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ABSTRACT

One of the purposes of the Code of Administrative Procedure and Administrative Litigation was to enforce the protection of the rights and freedoms of the administered, which sought to have a codification less adjective and more substantial in which all aspects were regulated both in the Administration as in the Contentious Administrative Jurisdiction; However, the non-regulated, continues to be processed, by express authorization of the CPACA, through the General Code of the Process, being a relevant issue to clarify how this coding is applied to the processing of resources in the administrative trial, which is will make the hand of jurisprudence and doctrine.
It will be of manifest relevance to handle what has been stated by the Supreme Organ of the Contentious Administrative Jurisdiction between the years 2014 to 2016, in order to ratify through the jurisprudence the rules of application of the CGP in the processing of the resources.

Keywords: Validity; Transition; Expert Opinion; Referral Rules; Burden of Proof.

RESUMEN

Una de las finalidades del Código de Procedimiento Administrativo y de lo Contencioso Administrativo fue hacer efectiva la tutela de los derechos y libertades de los administrados, lo que buscó tener una codificación menos adjetiva y más sustancial en la que se regularan todos los aspectos tanto en la Administración como en la Jurisdicción Contenciosa Administrativa; sin embargo, lo no regulado en esa codificación, sigue siendo tramitado por expresa autorización del artículo 306 del C.P.A.C.A., a través del Código General del Proceso, siendo un asunto relevante el poder clarificar cómo se aplica esta codificación a la obtención del dictamen pericial en el juicio administrativo, lo cual se hará de la mano de la jurisprudencia y la doctrina, teniendo en cuenta la modificación que introdujo la Ley 2080 de 2021, mediante la cual se modificaron los artículos 218 a 222 de la Ley 1437 de 2011, introduciendo un cambio sustancial en la presentación de esta prueba especial, relacionada con la obligación y forma de aportarlas. Lo anterior, se estructuró a partir lo expuesto por el Máximo Órgano de la Jurisdicción de lo Contencioso Administrativo entre los años 2021 a 2023 y en el Tribunal Administrativo de Risaralda, en aras de ratificar a través de la jurisprudencia las reglas de aplicación del C.G.P., en el trámite de la prueba pericial y su aplicación dentro de los juicios administrativos.

Palabras clave: Vigencia; Transición; Dictamen Pericial; Normas de Remisión; Carga de la Prueba.

INTRODUCTION

Law 1437 of 2011, which establishes the Code of Administrative Procedure and Administrative Disputes, established its procedures to process the means of control of knowledge of the administrative jurisdiction in

such a way that the procedural rules that direct the course of the so-called ordinary process are condensed into a single codification.[1,2]

However, according to the provisions of Article 306 of the C.P.A.C. In the aspects not contemplated in this Code, the Civil Procedure Statute is applied as compatible, finding that in 2012, the General Procedural Code was issued, which replaced the Code of Civil Procedure, establishing the gradual entry into force of its rules, presenting another important regulatory change with Law 2080 of 2021, This law modified, among other aspects, the presentation of the expert evidence in contentious-administrative matters in such a way that it has given rise to different interpretations as to whether the parties must present it in the evidentiary opportunities, whether it is necessary to support it and call the expert to contradict it, or whether it is taken as documentary evidence, or whether it is taken as documentary evidence in the administrative litigation; or whether it is taken as documentary evidence when it is submitted.[3,4]

The above described and specifically the application of the rules of the General Code of Procedure in the administrative jurisdiction, has been the subject of study by the Full Chamber of the Council of State, who, since 2014, unified the jurisprudence regarding the application of the General Code of Procedure in the administrative litigation processes, which allows a study based on the jurisprudence decanted by this Collegiate in view of the legislative change implemented by Law 2080 of 2021.[5,6]

Taking into account the above, the problem to be solved by this article is expressed in the following question: How does the General Code of Procedure apply to the collection and practice of the expert opinion in accordance with the amendment of Law 2080 of 2021?

Thus, starting from the fact that the current codifications have been issued with the purpose of materializing the ideal of justice, seeking to make the procedures less rigorous and more effective. Thus, the teleology of the Code of Administrative Procedure and Administrative Disputes is the effective protection of the rights of individuals and their prevalence over the forms, without leaving aside the fact that to achieve this objective, both the General Code of Procedure and the C.P.A.C.A., contemplated the system of hearings, which resulted in agility.[7]

Now, the ordinary proceedings before the Contentious-Administrative Jurisdiction are based on special legislation set forth in Law 1437 of 2011, without prejudice to the references made to the General Code of Procedure, as established in Article 306 ibidem, which is currently innocuous if we take into account that Law 2080 of 2021,[8] modified the Code above in relevant issues such as obtaining expert evidence and its practice, which for 11 years was handled in such a way that the parties could provide it. The expert needed to appear at the hearing for the practice of evidence in order to support it. [9]

For this reason, the introduction of Law 2080 of 2021 that alludes to the application of the C.G. del P. for the practice of the expert evidence-related controversies in the way the mentioned normative provision is requested, ordered, and practiced, there being doubts as to whether this codification should be used for these purposes, since one of the purposes of the Code of Administrative Procedure and Administrative Disputes was to unify the procedure that was necessary to apply in the processes of the administrative jurisdiction, leaving a reference norm in the unregulated.[10]

The objectives of this article are, therefore, at a general level, to analyze the application of the General Procedural Code in the processing of expert evidence according to Law 2080 of 2021 in the administrative jurisdiction 2021 - 2023. In turn, the following objectives were specifically proposed: i) to identify the procedural reference that the Code of Administrative Procedure and Administrative Disputes makes to the General Code of Procedure; ii) to explain the changes that occurred with Law 2080 of 2021 in the Decree and practice of the expert opinion; and, iii) to analyze the jurisprudence of the Council of State and the Administrative Court of Risaralda during the years 2021 to 2023, regarding the obtaining of the expert opinion in the contentious trials.[11]

METHODS

The methodological principles of evaluative research will guide this research as it is intended to perform an analysis of the norm, the jurisprudence of the Council of State and the Administrative Court of Risaralda, seeking to find the assumptions of fact and law on obtaining the expert opinion under Law 2080 of 2021 and the referral to the General Code of Procedure in such proceedings.[12]

For this reason, the research is exploratory; thus, jurisprudence emanating from the Council of State and the Administrative Court of Risaralda for the years 2021 to 2023 was sought in order to elucidate the factual and legal grounds for the practice and proof of the expert opinion according to the remission that Law 2080 of 2021 makes to the General Code of the Process in the administrative jurisdiction and specifically in what has to do with the processing of appeals.

The sources of information of this work are secondary sources since they are based on the study of norms such as Law 2080 of 2021 and the General Code of the Process and its application in the cases submitted to the administrative jurisdiction, which was extracted from the sentences issued by the Council of State and the

Administrative Court of Risaralda from the year 2021 to April 2023.

FRAME OF REFERENCE

Historical Framework

It is necessary to refer at this point to the emergence of the reform introduced by the Code of Administrative Procedure and Administrative Disputes in order to contextualize the reader in this work and based on the fact that the new codification sought to condense all aspects in a single Statute in a specialized manner.[13]

Thus, the change of substantive and adjective provisions in the Contentious Administrative Jurisdiction originated in an attempt to update the law to the modernist postulates and the globalization of the States, which brought about the change of the legal norms; therefore, in view of the Code that was in force for many years - 1984 - it was necessary to update the procedural postulates and establish changes that would make the processing of the processes fast, deep and effective, being also a reason for the implementation of the proposed reform the problem of internationalization and modernization of the subject of the administration and its conflicts. [14]

Now, the historical background of the present research work can be found by reviewing the rules that governed the administrative procedure, and the fact that previous codifications enshrined the rules of referral to other codes when the aspects to be resolved were not regulated.[15]

In accordance with the above, the previous Contentious Administrative Code in Decree 01 of 1984 established in Article 267 that the Code of Civil Procedure would be applied in those aspects not regulated. In fact, throughout the articles, as in the case of impediments, recusals, the processing of appeals, grounds for nullity, and other procedures, the same Decree referred to the Statute of Civil Procedure.[16]

At this point, it is necessary to contextualize the genesis of Law 1437 of 2011 and its objectives with the purpose of verifying the applicability and application of the General Procedural Code to the processing of the means of control enshrined in the Contentious Administrative Jurisdiction.[17] Thus, it must be said that the teleology of the reform in light of the Political Constitution of 1991 advanced in terms of the effectiveness of rights and sought legal certainty through the condensation of dispersed issues, including technological advances, specifying the following:[18]

The administrative procedure guarantees the protection of the rights of the people and the effectiveness of the realization of these rights. For this reason, the procedure includes new principles such as due process, good faith, morality, and citizen participation, establishing, for example, that the omission of prior consultation is a cause for nullity. In addition, special rules are included to settle conflicts of administrative competence and to avoid delays in the response to be given to the citizen.

THEORETICAL FRAMEWORK

In this section, mention is made of the purposes of the reform and its effectiveness in order to clarify the need or the reason for the application of the rules of Civil Procedure to this Jurisdiction in the practice of evidence, such as the collection of the expert's opinion.[19]

This analysis is developed under the premise that within the administrative Jurisdiction, the prevalence of substantial law, and from there, to leave aside the rigorousness of the procedure aiming at more expeditious and guaranteeing processes for the parties in dispute. To achieve this, the oral system has been implemented, and this is an important contribution since:[20]

Orality in the Colombian justice system arose as a solution to the problems that were arising in the processing of trials in the different jurisdictions. Judicial congestion, delays, impunity, and endless procedures have generated a lack of credibility in society, the justice system, and its judicial structure. That is why the implementation of a more expeditious procedural system that guarantees the elimination of the inconveniences presented by the user is initiated".

The Contentious Administrative jurisdiction, with the introduction of the reform through Law 1437 of 2011, sought to leave aside the application of the simple procedural forms enshrined in the codes. Thus, the judge, as adjudicator within a process, knows the law to be applied, and therefore, it is not necessary for the parties in a dispute to enter to prove what the rules establish.[21]

The aura novit curia principle is then applied, whose usefulness lies in the fact that it intends that the parties limit their evidentiary activity to the factual assumptions that they allege and not the rules that are already duly established. It should not be understood that they do not allege them as grounds for their claims. However, in the event that they do not cite all those that are applicable, and although the judge must rule with what is proven, he can, in a certain way, rely on this principle to give scope and application to rules not invoked by the parties in their respective pleadings. [22,23,24,25]

It follows from the implementation of a more expeditious system within the administrative Jurisdiction that the parties should make sure to express the facts as clearly as possible; since the judge, according to his science and conscience, is free to choose the applicable law, errors or omissions of the parties do not bind the

court, and in the search for the law all roads are open to him.[26]

Moreover, international bodies have pronounced themselves with respect to the substantive nature of the contentious administrative Jurisdiction.[27] Thus, for example, in the Case of the Ituango Massacres v. Colombia, the Inter-American Court of Human Rights stated:

Another important aspect of the reform is that it proposes rules regarding the strictness of the contentious Jurisdiction with respect to the presentation of the claim and its response since, in accordance with the reference to the C.G.P., the opinion must be presented in the evidentiary opportunities established in articles 212 of the C.P.A.C.A.A.[28,29]

However, it should be noted that Law 1437 intended to reaffirm the specialty of administrative matters under principles of procedural economy such as oral proceedings with some written proceedings;[30] the powers of the judge as the director of the process, having to sanitize it, set the dispute, define the evidence and adopt ex officio decisions to promote the process when the parties are passive.[31]

On the other hand, the General Procedural Code, in line with the teleology of the C.P.A.C.A., codification is not only applied in civil cases but also in the events in which it refers to its regulations in the absence of a special text, as it happens in the administrative Jurisdiction because although Law 1437 of 2011 intended to be complete and comprehensive, it has evidenced in the same text the reference to rules of civil law, introducing some changes that must be analyzed.[32]

LEGAL FRAMEWORK

The legal framework of the present research work is generalized if it is taken into account that the application of the General Code of the Process to the administrative Jurisdiction and in observance of the rules of the Administrative and Contentious-Administrative Code is to be analyzed, especially in what has to do with the processing of the expert opinion, in Articles 218 to 220 of the C.P.A.C.A., where the amendment made by Law 2080 of 2021 refers to the General Code of the Process that was already enshrined in general topics in Article 306 of Law 1437 of 2011. Particularly, Article 306 of the C.P.A.C.C.A., which reads as follows:[33]

"Article 306. Aspects not regulated. In the aspects not contemplated in this Code, the Code of Civil Procedure will be followed insofar as it is compatible with the nature of the processes and actions that correspond to the Contentious Administrative Jurisdiction".[34]

Similarly, Articles 54 to 56 of Law 2080 of 2021, which amended Articles 217 to 219 of Law 1437 of 2011, specifically the latter regarding the practice of the expert opinion, since for those purposes, a reference is made to the C.G. del P. Now, the General Procedural Statute regulates the expert opinion in Articles 226 to 229, with important changes in this regard.[35]

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A search was made in the search engines Redalyc, Google Scholar, Scielo, repository of the Universidad Militar Nueva Granada, and library of the Universidad Libre Seccional Pereira, among others, finding as contributions for the degree work the following documents.[36]

- *A publishable article entitled* "The Impact of the General Code of Procedure in the Contentious-Administrative Jurisdiction," whose subject matter is limited to aspects which, in the author's opinion, evidenced a notorious change in the processing of administrative proceedings, especially in the role of the National Agency for the Legal Defense of the State, the change in the filing of proceedings, the personal notification of the writ of admissibility of the claim, the impact on the practice of evidence, the computation of terms for the duration of the proceedings and specifically the regulation of the executive process and its processing based on the C. G. del P.
- *The article written by Dr. Martha Teresa Briceño de Valencia, State Counselor, entitled* "The validity of the General Code of the Process in the processes of the Contentious Administrative Jurisdiction," where dissertations are made with respect to some articles of the General Code of the Process, which would be incompatible with the rules of the Code of Administrative Procedure and Contentious Administrative Proceedings.
- *On the other hand, the doctoral thesis entitled* "The Resources in the Contentious Administrative Process and the Means of Challenge," which was presented in 2015, serves as a conceptual reference regarding the resources within the contentious administrative jurisdiction.
- *In turn, the Memorial of the International Seminar for the presentation of the New Code of Administrative Procedure and Administrative Litigation, in which the topic of* "Ordinary Appeals before the Contentious Administrative Jurisdiction" was discussed, whose author is Dr. Héctor Romero Díaz, in whose section an explanation of the processing of appeals and the applicable rules is made.
- *On July 3, 2014, an article entitled* "Unified jurisprudence on the application of the CGP in contentious-administrative matters" was published in the legal journal ÁMBITO JURÍDICO, which presents a summary of the unification judgment of the Council of State on this aspect.

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- *Another source that refers to the General Procedural Code and its effects on jurisdictions other than civil law is the article by Dr. María del Socorro Rueda Fonseca, entitled*: "La expedición de un Código General del Proceso como mecanismo de descongestión: conveniencias y dificultades. ¿responde la propuesta de código único a las exigencias de eficiencia de la justicia?» published in Revista de Derecho Privado, No. 34, June, 2005, pp. 123-137 Universidad de Los Andes Bogotá, Colombia.
- *Finally, the book*"Derecho Procesal Administrativo y de lo contencioso Administrativo" is authored by Dr. Lucelly Rocío Munar and Dr. Luis Roberto Ortiz. Publisher: U. Católica de Colombia in co-publication: Editorial Temis S.A., 2014, which is dedicated in its second part to the processing of appeals.

RESULTS AND DISCUSSION

Generalities of the collection of the expert's report

Before verifying the application of the General Procedural Code for the collection of the expert opinion in the administrative jurisdiction, it is necessary to indicate that prior to the entry into force of Law 2080 of 2021, the expert opinion was collected according to the rules of Law 1437 of 2011,[37] where the parties requested the judge to practice the opinion and from there its contradiction took place in the hearing of evidence, with the intervention of the expert who supported it in the hearing.

Now, article 219 of the C.P.A.C.C.A., modified by article 56 of Law 2080 of 2021, does not indicate that the parties can announce the opinion in their pleadings and present it later. However, this situation is regulated in the General Code of the Process; in fact, the judge is granted the power to grant to whoever so requests an additional term to present it in the evidentiary opportunities.[38]

From there, it is appropriate to make a comparison of the rules in question in order to verify the changes with the entry into force of Law 2080 of 2021.

Thus, before the entry into force of the Law above, Article 218 regulated the expert evidence in which it was stated that it would be carried out according to the provisions of the General Procedural Code when the Code of Administrative Procedure and Contentious Administrative Matters did not contemplate the way to practice the evidence, which was not the case because Article 219 of that Code stipulated the procedure for the expert evidence.[39,40]

In this sense, article 54 of Law 2080 of 2021 modified Article 218 of the C.P.A.C.A. in the same terms but adding a mandatory reference to the C.G. del P., since in the last paragraph, it was specified that when the expert opinion is provided, by the parties or decreed ex officio, the contradiction, and practice will be governed by the rules of the General Statute of the Process without the need for the expert to appear unless the contradiction was requested.[41]

Additionally, Article 55 of Law 2080 of 2021 added that the expert opinion should remain in the secretariat of the Office for at least 15 days prior to the performance of evidence since it was provided, which may be extended only once at the request of the public entity if it needs to contradict the expert opinion, even warning that once the expert opinion is brought to the process, it must be brought to the attention of the counterparts so that they may take any of the actions established in Article 228 of the C.G.P., i.e., request the appearance of the expert in court, that is, to request the appearance of the expert at the hearing, to provide another one or to carry out both actions. At this point, it should be noted that if this action is not taken,[42] the report is incorporated into the file without the need for the appearance of the person who prepared it, which was not the case under Law 1437 of 2011 since Article 219 specified that in all cases the expert must be summoned and that if he/she did not appear, the evidence would not be valid.[43]

According to the comparison made above, before the entry into force of Law 2080 of 2021, the expert opinion was provided or requested by the parties in the evidentiary opportunities listed in Article 212 of the C.P.A.C.C.A., that is, in the claim with the answer, in the case of the amendment of the claim and its answer; or when the transfer of exceptions was waived.[44]

Controversies in the practice of the expert opinion

In this aspect, the variation was presented related to the fact that in the aspects not regulated, the provisions of the General Code of the Process are applied, whose article 227 establishes that in those evidentiary opportunities not only can be requested but also can be announced and then it will be the judge who by order establishes the terms for the one who has announced it to provide it. This was the conclusion reached by the Administrative Court of Risaralda when dismissing the appeal in the class action with file number 660013333-001-2022-00001-01,[45] where it pointed out that although Law 1437 of 2011 regulates what concerns the expert opinion, -article 218-, it also states that in the aspects not regulated the provisions of the rules of the C. G.P., so although the C.P.A.C.A. indicates that the parties may provide the expert opinion, nothing refers to the procedure to be followed in the event that the party cannot do so within the term provided for it and that procedure is regulated by Article 227 of the C.G.P., This procedure is regulated by Article 227 of the C.G.P., a norm applicable to this type of actions, by remission made by Article 68 of Law 472 of 1998.[46]

Therefore, the decision adopted in the first instance must be revoked, not only because Article 227, in the

opinion of this court, is applicable to the specific case by virtue of the fact that said procedure is not expressly regulated in Law 1437 of 2011,[47] but also because the requirements established therein for the expert opinion to be submitted are also met; although it is true that Article 227 C.G.P. states that the party that intends to validate the expert's opinion must submit it to the court, While it is true that article 227 C.G.P. states that the party that intends to avail itself of an expert opinion must provide it in the respective opportunity to request evidence, it is no less true that when the term provided is insufficient to provide the opinion in the plaintiff's opinion, the interested party may announce it in the respective document and must provide it within the term granted by the judge, and to that extent,[48] the judge must expressly pronounce positively or negatively on such request for additional time, stating the reasons for his determination; However, since the latter circumstance was not complied with, that is, despite the fact that the plaintiff requested the additional time period in time, the a quo did not pronounce on the matter, the appealed order must be revoked with respect to the denial of the decree of the expert opinion; but, in order to grant the judge the opportunity to resolve the request for additional time period raised by the appellant. [49]

On that occasion, this court emphasized that the term referred to in Article 227 of the General Code of Procedure was to provide the announced report but not to add to it or change the evidence referred to.[50]

These same considerations have been the basis of the decisions on the matter found in the Council of State, where it is mentioned that the C.P.A.C.A. is a general rule and subsequent to the C.G. of the process, which contains special matters and regulated for each means of control and that it even incorporated the practice of evidence, verifying that there was an express pronouncement of the legislator on the collection of the expert opinion.[51]

It should be remembered that competence is the application or concretion of the jurisdictional function in the concrete case. Hence, the rules that regulate both must be applied in a compatible and articulated manner since the first is derived from the second.

Article 1 of Law 1564 of 2012 "C.G.P." expressly establishes the scope of application of that regulation in the following terms: This Code regulates procedural activity in civil, commercial, family, and agrarian matters. It also applies to all matters of any jurisdiction or specialty and the actions of individuals and administrative authorities when they exercise jurisdictional functions insofar as they are not expressly regulated in other laws. [52]

In this order of ideas, the integration and normative remission made by Article 68 of Law 472 of 1998 is only viable in those events in which there are no norms contained in the C.P.A.C.A. that expressly regulate the matter and that have to do with the specific means of control.

From this interpretation, it could be indicated that the General Code of the Process cannot be applied because when verifying article 219 of the C.P.A.C.C.A., even with the modification, it is evident that article 219 of the C.P.A.C.A. is not applicable, even with the modification, it is evident how the expert opinion is collected, but as can be seen in the comparative table above, the truth is that aspects related to the announcement of the opinion in the evidentiary opportunities were not even established in Law 2080 of 2021. Hence, the jurisprudence accepts that an integral interpretation of the rules is made and the provisions that regulate this topic are applied.[53]

Another change that was applied to the administrative jurisdiction is the fact that in the past, the expert opinion was supported in a hearing by the expert who made it. However, nowadays, it is provided, and after the transfer, the expert is only summoned if any of the parties request clarification, complementation, or objects to it for serious error, as provided in Article 228 of the General Code of Procedure. Otherwise, the expert is not summoned to the hearing, and in practice, it is introduced as evidence without such contradiction.[54]

This requires that the parties be attentive to the transfer of the report made by the Secretary of the Office or by order so that, if they so wish, they may request clarification, complementation, or the appearance of the expert to support the report at the hearing.[55]

Another change that became evident with Law 2080 of 2021 is that the expert's report may be supported, but the hearing for such purposes cannot be set until after the report has remained at the disposal of the parties for fifteen (15) days in the Office's Secretariat.[56]

These aspects were addressed by the Council of State and punctually the entry into force of Law 2080 of 2021 and its impact on the practice of the expert evidence, indicating in a recent pronouncement that the date on which the opinion was decreed must be taken into account, because if it was prior to the entry into force of the Law above, in terms of Article 624 of the General Procedural Code-CGP1, the procedural rule that governs such action is Law 1437 of 2011, despite the fact that the amendments and additions introduced by Law 2080 of 2021 are currently in force. [57]

As can be seen in the regulations above, the contradiction of the expert opinions, when these are decreed by the judge and provided after the filing of the introductory libel, will be carried out in the course of the evidentiary proceedings provided for in Article 181 of the C.P.A.C.A.; evidentiary hearing in which the parties involved in the process have the opportunity to contradict the expert opinion, request additions or verbal

clarifications to the opinion and formulate objections due to serious error. For this reason, it is not appropriate to grant the transfer requested by the defendant entity since this will be the subject of the evidentiary hearing, proceedings to which the expert Carlos Enrique Aranguren Hayek will appear in order to support the expert opinion that was entrusted to him and to resolve the additions or clarifications presented by the other parties to the proceeding, as appropriate. The preceding does not prevent the defendant entity from consulting the file. At the same time, it is available to the parties at the Secretariat of the First Section of the Council of State.[58] In this regard, it should be noted that the expert opinion was submitted to the file on September 9, 20193 and that it has remained available to all parties to the proceedings for more than a year, so there is no violation of the defendant entity's right of access and defense, since the corresponding procedural opportunity to exercise the contradiction of the expert evidence is in the evidentiary hearing.[59,60,61]

It is important to take into account that the entry into force of Law 2080 of 2021 is of manifest relevance for the processes that were in process when the evidence had not been decreed. In that case, it is plausible to apply the provisions of the C.G. del P., not so when by February 2021, no evidence had been decreed because even when the process dates back to 2019, the new rules regulated the practice, in this case, of the expert opinion.[62]

CONCLUSIONS

First of all, it should be noted that the General Procedural Code was applied in the administrative litigation jurisdiction prior to the issuance of Law 2080 of 2021 since Article 306 of Law 1437 of 2011 allowed the application of such article in matters not regulated in the C.P.A.C.A.

The same considerations were made for the practice of the expert opinion in Article 56 of Law 2080 of 2021, where it was stated that the provisions of the General Procedural Statute would be applied in matters not provided for. However, this type of interpretation needs to know what the legislator alluded to; on the one hand, with the issuance of the C.P.A.C.A., it was sought to regulate in a single codification the procedures and processes of the means of control of the administrative justice and with a reference rule such as Article 306, which has been used when the Code does not really regulate the subject, as it happens with the incidents, impediments, recusals, the effect of the resources, but not when Law 1437 of 2011, had already regulated the practice of the expert opinion and its collection.

This has led to the creation of different interpretations as to how it should be presented and as to the announcement of the evidence, although it can be announced, it is plausible that when it is presented, it may change what it was intended to prove, a situation that only the judge would glimpse at the time the evidence is practiced.

Thus, a healthy interpretation is that the provisions of the General Code of the Process are accepted but require that the parties must submit their opinion in the evidentiary opportunities indicated in Law 1437 of 2011 since these are the opportunities that, in accordance with Article 212 ibidem, allow the parties to submit the evidence and the judge of knowledge, to set the dispute in order to guide the evidentiary debate within a process.

Therefore, the activity of the party should not be limited to announcing the opinion without taking the necessary steps to obtain the technical evidence and present it within the evidentiary opportunities listed in Law 1437 of 2011, especially when in the case of plaintiffs and view of the means of control such as direct reparations or contractual disputes, there is a term of approximately two years for the filing of the claim (from the time of the occurrence of the facts until the filing of the introductory libel), in addition to the time between the transfer of the claim and the term to rule on the exceptions, to which is added the reformation of the claim.

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