

DECISION SU-360 OF 1999

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The plaintiffs worked as street vendors in several areas of the Bogotá, generally occupying a large portion of the city's sidewalks. They were people of low income and with a low degree of education. Most of them had emigrated from the countryside and had no other source of revenue.

The vendors had established their businesses in the sidewalks without being questioned by the city authorities. Moreover, the city itself had granted permits to some of them. However, in 1998, the city administration launched a program in order to recover the city's public space, under which all street vendors would have to be evicted. The city did not offer jobs or any alternatives to the vendors that were going to be removed from the sidewalks.

As a result, the vendors filed a writ of tutela in order to challenge the constitutionality of the measures enacted by the City of Bogotá, claiming that they were contrary to their fundamental rights to work and equality. In addition, the plaintiffs submitted that their activities as street vendors in the evicted sidewalks were justified by the principle of estoppel, as the city's permissive attitude towards their establishment led them to reasonably believe that it was lawful to establish businesses in those spaces.

The Court recognized that the matter before it revolved around the underlying tensions between the goal of recovering public space in the streets of Bogotá and the street vendors' right to work.

In that sense, the Chamber explained that *“in cases where such a strong social conflict exists, especially when eviction orders have already been issued, it is the duty of the Constitutional judge to undertake any measure necessary to protect public space. However, it must also defend the right to work of the people affected by such orders, as long as the elements for estoppel appear in the case at hand.”*

The Court stated that *“the chronic, yet tacitly allowed invasion of public space would seem to be, to the untrained eye, a minor inconvenience that demands no action from city authorities. Nonetheless, it is the view of the Chamber that disturbance of public space may actually interfere with the common well-being of the people and constitute a violation of the rights of pedestrians. Indeed, it is undeniable that unlawful occupation of public space may lead people to feel discouraged to stroll in the streets of their own cities, which will in turn, may progressively result in decay of urban areas. In that sense, proper and effective protection of public space is an objective of the utmost importance.”*

“Nevertheless, city authorities cannot seek to attain such goal by evicting unlawful occupants without developing a strategy to address the social issues that may arise from such measure. In fact, the problem of public space invasion cannot be blamed exclusively on the vendors. On the contrary, it is also the result of the chronic failure of the authorities to properly enact measures in order to ensure work opportunities for the

less favored. Therefore, State action pertaining to the issue of public space invasion must abide by the principle of fairness”.

As a result, the Court held that public space occupants can demand constitutional protection by means of the writ of tutela, as long as they meet the burden of proving that the authorities displayed a regular practice (or lack of) with regard to the occupation of public space, which led them to reasonably expect that it was allowed to do so.

Turning to the matter before it, the Chamber ruled that the respondent was estopped from evicting the plaintiffs from public space, as the city authorities had reasonably led them to believe that occupying sidewalks in order to establish a business was not an unlawful practice. Therefore, the Court ordered the city of Bogotá to relocate the evicted street vendors, or in the alternative, should relocation prove to be impossible, to apply any measure that the authorities may deem effective in order to ensure that they can fully exercise their constitutional right to work.