

DOI: <https://doi.org/10.63332/joph.v4i1.3128>

## Procedural and Evidentiary Aspects of Medical and Healthcare Liability. the Handling of Sensitive Data in Colombia

José López-Oliva<sup>1</sup>, Andrea Alarcón-Peña<sup>2</sup>, Fernando Luna-Salas<sup>3</sup>

### Abstract

*This research work aims to analyze the violation of the patient's rights to freedom and privacy and, in general, to habeas data incorporated in the so-called digital evidence. It seeks to demonstrate that, when weighing the rights to privacy and information of the medical user, the protection of habeas data prevails. The prevalence is established through the constitutional actions of group, popular, compliance and tutelage, which seek the prevention and in turn the sanction, for the violation of the human rights of the user of the health service. The research has a qualitative approach, with an exploratory scope. The research method used was the critical hermeneutic method promoted by Hans George Gadamer, and the techniques of conversation with experts and the relevant documentary search.*

**Keywords:** Sensitive Data, Habeas Data, Medical-Health Liability, Violation of Principles, Tutela Action, Class Action, Popular Action.

### Introduction

In the exercise of the activity carried out by the person who provides the medical service, there are a series of obligations to do and not to do – positive and negative. Thus, as an example of the latter case, there is the non-disclosure of the clinical data provided by the patient, who for the purposes of the relevant data protection regulations is called the "owner" of the information contained in a physical or digital documentary evidence. When the provider of the medical service is the State through a health institution, it is responsible for the information contained in the medical record, to mention an example, which for the normal development of the medical activity is carried out by the liberal medical professionals attached to the health entity. together with the documents containing the clinical data of the owner of the information, that is, the user of the health service.

Taking into account the above, the person responsible and the person in charge of the

---

<sup>1</sup> Universidad Militar Nueva Granada (Bogotá, Colombia) Abogado, Doctor en Derecho por la Universidad de Salamanca (España). Doctor en Bioética con énfasis en Bioética médica, responsabilidad y daño indemnizable por la UMNG. Postdoctor en Altos Estudios del Derecho por la Universidad de Bolonia (Italia). Profesor de planta, categoría asociado, de la Universidad Militar Nueva Granada. P. INV-DER-4043. UMNG, Email: [jose.lopez@unimilitar.edu.co](mailto:jose.lopez@unimilitar.edu.co), ORCID: <https://orcid.org/0000-0001-9308-2153>.

<sup>2</sup> Universidad Militar Nueva Granada (Bogotá, Colombia) Abogada, profesora universitaria e investigadora. Doctora en Derecho por la Universidad de Valencia (España). Postdoctora en Altos Estudios del Derecho por la Universidad de Bolonia (Italia). Profesora de planta, categoría asociado, de la Universidad Militar Nueva Granada, Email: [andrea.alarcon@unimilitar.edu.co](mailto:andrea.alarcon@unimilitar.edu.co), ORCID: <https://orcid.org/0000-0003-4926-4288>.

<sup>3</sup> Universidad de Cartagena (Colombia) Abogado. Profesor investigador del Departamento de Derecho Procesal y Probatorio de la Universidad de Cartagena. Magister en Derecho por la Universidad de Cartagena. Especialista en Derecho Procesal por la Universidad Libre. Doctorando en Derecho, Ciencias Políticas y Criminológicas por la Universidad de Valencia (España), Email: [flunas@unicartagena.edu.co](mailto:flunas@unicartagena.edu.co), ORCID: <https://orcid.org/0000-0003-4574-6335>



management of the clinical data are jointly and severally committed for the failure to comply with the appropriate and pertinent protocols in relation to the databases in their charge. The data are closely connected with the privacy and freedom of the user of the health service, who is the direct victim of the violation of the data incorporated in the declaratory documentary evidence. In accordance with the above, there is a tension between the rights of liberty and privacy and the right to information of data containing sensitive examinations of the human being, in this case of the patient or passive subject of the damage, a victim who is responsible only for proving the fact and the damage. configuring in this case for the purposes of the burden of proof the medical liability for presumed fault of the service.

Thus, when putting into practice the exercise of weighing between the above principles, it is relevant to ask which human right has greater preponderance. In turn, the following research question arises: Are there mechanisms for the protection of sensitive patient data? And, finally, what means of proof are relevant in a judicial process where the sensitive data of the medical user is involved? The hypothesis that will be tried to demonstrate is that the right to privacy and freedom revealed in documentary evidence that contains sensitive data – implicit in documents such as the patient's medical history – has greater relevance when weighing the right to information of third parties. With regard to the mechanisms for the protection of sensitive data, there are constitutional mechanisms that protect the human rights of the patient, otherwise the State would incur an international responsibility where the natural judge is the Inter-American Court of Human Rights, provided that the internal protection mechanisms have been exhausted.

All of the above without neglecting the evidentiary activity, which represents a fundamental pillar in judicial decision-making, since, beyond the formal procedure that involves various stages (such as the application, decree, practice, incorporation, assessment and determination of its scope), in essence, it is a complex mental process. This process culminates in a value judgment, based on the integration of cognitive and rational dimensions that structure argumentative thinking. (Quiroga & Luna, 2025, p. 5)

In order to develop in depth the hypothesis that is raised, this document is structured as follows: first, a series of preliminary comments are presented regarding habeas data and its intimate relationship with documentary evidence. After that, the categories that are used in the protection of clinical data are established. Thirdly, reference is made to the relationship-tension between the right to privacy and information contained, for example, in digital evidence. In turn, the constitutional actions and the means of proof that allow the protection and punishment of the violation of habeas data are listed. Finally, the conclusions of the proposed research are presented.

## **1. Comments Prior to Habeas Data**

On January 28 of each year, since 1981, the International Day for the Protection of Personal Data has been celebrated. The Council of Europe approved "Convention 108" related to the protection of persons, including patients, with regard to the automated processing of personal data such as those incorporated in the documentary evidence called "medical history", thus constituting a historic milestone in the matter.

In the same vein, in 2006 the Committee of Ministers of the Council of Europe established the celebration of "Data Protection Day", commemorated every year. Since then, the bodies dedicated to the protection of this fundamental right have carried out a series of activities that aim to provide citizens with the opportunity to understand and know, in a clear and concise way,

why their personal data are collected in clinics, hospitals or pharmacies and, additionally, to inquire about the treatment of the information – documentary and digital evidence – delivered as well as what their rights are with respect to the protocols and standards that regulate this process (Tornabene, 2015. Sepúlveda, 2010).

## **2. Clinical Data Protection and the Categories That Make It Up**

In general, data are classified as public and private, including so-called "sensitive" data of the patient, data contained in informed consent, data obtained in research carried out in biotechnologies, data incorporated into the medical record, among others. On the one hand, public data are classified as documentary evidence that is easily accessible to people: as a sample, a certificate of tradition and freedom of some type of property or the certificate of existence and legal representation of a company can also be considered public documentary evidence.

On the other hand, it is clear that private data is incorporated into the cell phone that contains digital evidence, through telephone numbers of the contacts that are registered on the mobile phone. This data is not classified as "sensitive" because, although it is true that it protects the privacy of the person, it does not compromise honor, freedom and intimacy and human dignity in its maximum expression. However, its incorporation is perfectly viable in a judicial process (Flo, 2014).

## **3. From The Right to Information to the Right to Privacy: A Relationship-Tension**

The fundamental rights to information and privacy are always in continuous tension in different contexts, for example, in the medical-health context where the patient's sensitive data is immersed.

### **The Right to Privacy Versus the Protection of Sensitive Data**

The Political Constitution of Colombia states that all people have the right to the protection of their personal and family privacy, as well as their good name. Therefore, it is the duty of the State to respect and ensure respect for these human rights of people, including the patient in his or her capacity as a user of a service, where there are those responsible for and in charge of the administration of sensitive clinical data, considered relevant documentary and digital evidence in a judicial process (Echandía, 2002).

Similarly, Colombian citizens and those who are part of the Inter-American Human Rights System have the right to know, update and rectify information. That is, the data that has been collected about them. This information is incorporated through documentary and digital evidence: the so-called data banks administered by the corresponding public and private entities (Const., 1991, art. 15. Flo, 2014), which are responsible for proving the absence of fault for the damage, configuring the so-called liability for presumed fault of the service .

At the same time, it has been established that the rights to human dignity, non-discrimination, freedom, good name , honor and other guarantees enshrined in the political charter will be respected in the collection, processing and circulation of data (Constitutional Court of Colombia, 2011a). In the same way, the regulation specifies which correspondence and other forms of communication of a private nature are classified as sensitive or not, that is, they can be accessed whenever the judicial operator determines it in a medical liability process, for example. However, it is reiterated that this information may be intercepted or recorded through a court order, in accordance with the provisions of the formalities instituted by law. Thus, because they

involve fundamental rights, the protocols established by the standard for handling this type of evidence are indicated in rules of a "statutory" nature.

When making references to statutory laws, it should be borne in mind that they are a series of rules of special relevance, which have the main purpose of protecting, for example, the human rights of the patient and the fundamental duties of the doctor. These norms, which are part of the substantive law, are subject to procedural law and evidentiary law, with the purpose of guaranteeing the protection of the rights, for example, of the victim of the violation of habeas data.

It is important to emphasize that if the regulation and approval of the above-mentioned elements are strictly complied with, in addition to giving a higher hierarchy to the laws that enshrine it, they become the correct way to achieve the effectiveness of the constitutional rights that are enshrined in favor of the victim: which includes maintaining the existence of a system of participation with democratic principles aimed at the care of a just order (Court of Justice of the Victim). Constitutional Court of Colombia, 2011).

### **The Right to Sensitive Data Information Vs the Right to Privacy**

The Colombian Constitution categorically indicates that everyone must be guaranteed the freedom to express and disseminate their thoughts and opinions. It also states that the doctor, for the purposes of this investigation, must inform the patient and receive truthful and impartial information from him. For his part, the user of the medical service has the right to receive information that corresponds to the truth of his medical and clinical conditions, but only he in his role as owner of the information and not from third parties who may even be relatives of the patient.

In this order of ideas, the right to privacy that the patient has prevails over the right to information contained in documentary and digital evidence that could be demanded by a third party interested in the state of health of the user of the medical service.

In short, when balancing the right to information with the safeguarding of the rights to privacy and freedom, the protection of the latter rights takes precedence over the former.

### **4. The Protection of Habeas Dates from the Right of Evidence and Constitutional Actions**

The Colombian constituent assembly established collective actions for the safeguarding of people's rights, which can be violated by the health service provider by failing to comply with the protocols for the protection of personal data contained in documentary evidence. For this reason, instruments are established for the defense of the interests of the users of the medical service in two ways: (a) when the damage has not been externalized and (b) when the fact of disclosing the clinical data generated damages to the users of the health service, duly proven in a judicial process for civil or state liability (Echandía, 2002. Dellepiane, 1961).

Thus, it is evident that Colombian citizens develop a collective awareness regarding the existing legal instruments and the existing means of proof that allow them to initiate lawsuits for the protection of individual and collective rights, in which all citizens have an interest (Esguerra, 2004).

Reference is made below to the constitutional actions and the pertinent means of proof that seek the protection of patients' personal data: the popular action, the group action or also called class

action, the constitutional action of compliance and the action of greater recurrence at the Latin American level called tutela or amparo action. The foregoing, in addition to the request, decree and practice of the declaration of the party, the statement of third parties, the documentary evidence, the indications, the affidavit of approval or the evidence by report, among others. (Congress of the Republic, 2012. Yáñez & Castellanos, 2016)

### **People's Action and Clinical Data Protection**

The direct and indirect victims of the damage caused by the violation of the right to privacy have the legal and constitutional possibility of suing for damages caused by the active agent of the damage. That is, the person in charge and responsible for the protection of sensitive data, which in the case of the provision of public health in Colombia and the countries that make up the Inter-American Human Rights System (IAHRS), is made up of the medical history, informed consent, biometric data, among others, which constitute the so-called documentary evidence.

Public health is made up of a set of policies that comprehensively guarantee the health of the population, through actions aimed at people that constitute indicators of living conditions, well-being and development. The aforementioned actions will be carried out following the guidelines of the State and must promote responsible participation of all sectors of the community (Congress of the Republic of Colombia, 2007). Popular actions aimed at protecting the collective rights of victims of clinical data breaches have the following functions.

### **Clinical Habeas Data and its Preventive Function**

The function of the class action is to avoid or prevent the damage that could be generated in the future, for example, by the violation of sensitive data obtained in scientific or biomedical research. In these investigations, all kinds of processes are carried out where the human being is involved and their data can be compromised, which are in charge of the person responsible for the security protocols of the database, the person in charge and the investigation team that intervenes in the relevant investigations, who may be called to depose as "technical witnesses" in a judicial process.

Likewise, the filing of class actions with a preventive nature in environmental pollution events where the objective liability regime and the reversal of the burden of proof operate are very recurrent (Adzel, 1987. Yáñez & Castellanos, 2016). Below is an x-ray of the data protection of persons who may have the status of "technical reports" in accordance with the provisions of the General Code of Procedure (2012).

Therefore, in order to avoid the violation of the right to privacy of the individual, protection tools supported by procedural and evidentiary law must be generated, with the purpose of protecting the data of the owners of the information and increasing the relevant policies for the permanent monitoring of the databases. bases that can constitute digital evidence (Sepúlveda, 2010).

### **Suspensive Function of the Class Action as A Form of Protection of Sensitive Data**

The social rule of law presupposes the recognition and comprehensive protection of the fundamental, human, social and economic rights of individuals, through the creation of necessary mechanisms to guarantee the safeguarding of rights, including the protection of personal data, considered sensitive and stellar evidence in a judicial process (Parra, 2006). These rights are indispensable prerequisites for the effective enjoyment of other human rights, including the right to life, which cannot be exercised if they are not granted. On the one hand,

the elementary conditions of subsistence such as the possibility of breathing or eating and, on the other hand, the guarantee of the right to privacy, freedom and a healthy environment (Rodríguez and Alonso, 1997).

In turn, another purpose of the popular action is to temporarily or permanently suspend the danger generated by the violation of the personal data of a patient who is in a state of health problems or, failing that, who is part of medical-scientific research that in the future will be potential "tests by report" (Congress of the Republic, 2012. Cruz, 2016). On the other hand, educational institutions also collect the data of the student, who is the owner of the information obtained and stored in the so-called "database", where the training establishment is responsible. an entity that uses, in the same way, pedagogical resources and experiences with the use of information and education technologies, with the aim of facilitating the teaching-learning process.

### **Restorative Function in the Protection of Data of A Clinical Nature**

The violation of patient data, generated by natural or legal persons – that is, clinics, hospitals and the liberal professionals in the health area who work in these healthcare centers – is related to any alteration to the protocols for handling the clinical data bank . It is considered that the aforementioned violation has a negative impact on the well-being and health of people, in addition to altering the right to privacy and freedom of the user of the health service. This fact contravenes the provisions indicated in the Political Constitution, as well as in the international treaties ratified by Colombia related to the protection of the individual data of natural persons.

Therefore, the popular action is established with the aim of avoiding the negative effects of the violation of the rights to privacy and freedom, as well as restoring the state prior to the occurrence of the transgression. Consequently, the intention of the aforementioned popular actions is to protect collective interests and, as a corollary of the previous one, to safeguard the rights related to the protection of people's data, in this case, the user of the health service. All through judicial actions that prevent the externalization of the damages that generate damages that must be proven within the trial, for the violation of the right to habeas data.

### **Sanction for the Violation of Habeas Data Through Group Action**

States develop in accordance with their needs and with the public policy for the protection of human and fundamental rights. The aforementioned policy is related to the successive response of the State and the government to the problem that is revealed, for example, in the handling of habeas data. Thus, public policy aimed at the protection of personal data is aimed at solving a whole series of problems that may arise in various sectors, correcting inequities and attenuating in some way the negative aspects of the transgression proven through the relevant means of evidence (Salazar, 2009. Parra, 2006). This damage is caused, for example, by making an inadequate balancing exercise between norms and principles such as freedom and privacy, considered human rights, with the right to information (Alexy, 2012).

Public policy related to the protection of personal data integrates decisions, actions and sanctions, as well as agreements, inactions and regulatory instruments that are implemented by state authorities. The foregoing, in addition to the eventual participation of individuals, which aims to compensate – in case it has already occurred – some type of unlawful damage, which in this case would be related to the violation of the rights to liberty and privacy duly evaluated and proven in a judicial process. In short, public policy is part of a set of specific actions that aim to modify or maintain harmony among people (Velásquez, 2009) in the local or international

context. For this reason, European states have implemented mechanisms to protect rights, by virtue of the possibility of the right to privacy being violated as a result of the irregular tracking or exploration of personal data, a situation that would represent the exclusion of evidence due to its illegality or illegality (Estrampes & Domínguez, 2004; Deu, 2011).

If the public policy aimed at protecting privacy and freedom lacks effectiveness and the damage is externalized with the consequent generation of damages, the victims, in this case patients whose habeas data is violated, can file group constitutional actions, which no longer have a purpose of prevention —because the damage was externalized—, but compensatory. In other words, compensation for damages is demanded and not prevention because the damage related to the violation of the clinical database protection protocols was externalized. This violation must be proven by the victim, in the so-called liability for proven fault (Parra, 2010).

Consequently, the purpose of the class action is purely preventive, while the class action demands the existence of a present, real and certain damage that seeks to be repaired by the perpetrator, who in this case violates the rights of the patient, the owner of the clinical data. Therefore, the objective of filing a group action as a result of the existence of the plural violation of the victims of habeas data, is to seek comprehensive reparation for them. In this regard, it is evident that the duties and obligations of the State and the citizen are aimed at respecting the rights of others, defending human rights, and protecting the rights to privacy and freedom of patients, who are the owners of the information contained in the clinical data and who have the right to file the pertinent legal actions supported by relevant and relevant evidence (Const., 1991, art. 95. Parra, 2010).

When the rights of a plurality of victims are violated, they have the power to initiate preventive or reparative actions for the duly proven damage. In short, the Constitutional Court has pointed out that collective rights have the particularity of being supportive, participatory, broad-spectrum and non-exclusive. These rights are not developed independently or as a system behind closed doors in the face of social and political developments, but belong to all members of a State. Citizens who can demand effective action from justice and an advance work of protection, which is aimed at preventing some type of affectation or restoring a damage caused. all through class actions, popular actions and the pertinent procedural and evidentiary rights (Constitutional Court of Colombia, 2011b. Parra, 2010).

## **6. Enforcement Action: Rules That Protect Sensitive Data**

The world has approximately 7 billion people and it is projected that by 2025 there will be a population of more than 9 billion, with one in five living on one dollar and twenty-five cents a day or less. The situation makes it impossible to access public health due to the absence of policies that guarantee this right. In addition to the above, more than 1500 million people do not have electricity service. In addition, more than 1 billion people go hungry every day and greenhouse gas emissions continue to rise, leading to the extinction of one-third of all known species. All of the above generates instability and poverty on the planet, due to the lack of a global criterion on the protection of people's rights, including the rights to freedom and privacy.

In Colombia, in order to prevent the effects of the figures mentioned above and that affect the country directly, compliance action has been implemented. through it, any natural or legal person, public servant or not, is empowered to demand from the judicial authority compliance with the legal or administrative duty to protect personal data and not to disclose them in accordance with the provisions of the law (Congress of the Republic of Colombia, 2012).

The aforementioned action is aimed at ensuring the validity and material effectiveness of the norms, rules and principles in a formal or material sense. In addition to the administrative acts that protect the rights to privacy and freedom of the person that have the objective of concretizing the principles of the social rule of law, and thus ensure compliance with a fair legal, social and economic order, with priority given to the protection of the rights to life, good name and honor of the patient, which supersede the right to information that is also protected by the norms principles (Congress of the Republic of Colombia, 1997).

## **7. The Tutela Action as an Instrument for the Protection of Sensitive Data**

A right is fundamental when it is inherent to a specific legal, political, social, economic and cultural nucleus, in which the human being develops integrally. Since the aforementioned right meets the above characteristics, it is classified as fundamental, even if it is not expressly recognized in the Colombian Constitution and/or in the section on fundamental rights of our Magna Carta, and that being unknown violates the basic guarantee of the citizen for normal survival.

The Tutela Action becomes, by its object in the social state of law, a guarantee to the members and a limit to the power of the state in legislative and administrative actions; therefore, the tutela action translates into the constitutional action par excellence (Estrada, Luna et al. 2023, p. 85).

Tutela has established itself as an essential tool in the Social Rule of Law, by providing access to justice for vulnerable groups and correcting imbalances in unequal relationships. Its relevance is reflected in its ability to harmonize individual rights with the general interest, safeguarding constitutional principles such as human dignity, equality and due process. In addition, he has

allowed the development of a dynamic jurisprudence that strengthens the effective protection of fundamental rights in the country. (Tirado, Luna & Barreto, 2024)

The above insofar as the human being is placed in a superior situation in the universe in which he develops. The rights of the human being cannot be violated, in this case, by those in charge and responsible for the treatment and administration of the patient's sensitive data. The State must protect the right of the human being to freedom and autonomy, ensure equality among people and protect the rights to honor, privacy, free expression and thought that are intimately related to the human rights of those who make use of the medical service to whom damage should not be caused causing harm (Parra, 2010).

It is important to point out that when the right of the person to habeas data is violated, his right to privacy, liberty and even health, which is inherent to human dignity, is violated, intimately related to the life and physical and mental integrity of the patient. In this type of event, the constitutional action for protection has safeguarded the rights of the human person. This can be used in order to claim before the judges at any time the payment of the relevant compensation, whenever the situation warrants it, following a procedure that can be undertaken by the person himself or by someone acting on behalf of the victim of the damage.

The aim is to demand the protection of the fundamental rights of the individual, as expressly defined in the Constitution, whenever these are violated in some way by the action or omission of any public authority. With respect to the above, the protection provided consists of an order for the entity, with respect to the person filing the guardianship, to act or refrain from doing so in order to achieve the effective fulfillment of the aforementioned rights, provided that it is demonstrated through the pertinent means of proof that these have been violated (Ugarte, 2009).

The ruling of the tutelas will have to be of an immediate nature and may be challenged before a competent judge and, ultimately, will be sent to the Constitutional Court for eventual review. The foregoing will apply when the affected party has no other means of judicial defense, except when it is used as a mechanism to avoid irreparable damage. Finally, it is important to mention that it will be the law that will be in charge of establishing when the tutela action can proceed against individuals who are in charge of providing some type of public service or whose conduct affects the collective interest in some way. It is worth considering that under no circumstances may more than ten days elapse between the request for an action for protection and the pertinent resolution, otherwise the fundamental rights of the plaintiff will be considered violated (Const., 1991, art. 86. Ugarte, 2009).

Likewise, Colombian judges have the so-called functional diffuse control for the protection of the rights of people in general and in particular of patients in a state of defenselessness, judges who, regardless of their competence, have the power to protect the rights of people immediately. The Constitutional Court of Colombia decides whether the matter related to the protection of personal data and health, for example, are of special relevance to the community, and if so, this corporation acts under the so-called "concentrated" model of constitutional control. In this way, the so-called mixed control of constitutionality was instituted in Colombia, exercised in the first instance by all the judges of the Republic and ultimately by the Constitutional Court who, before ruling, assess the relevant body of evidence (Velandia, 2014. Parra, 2006).

The aforementioned corporation protects compliance with the general principles that regulate the rules for the protection of sensitive clinical data that are harmed in the process of facilitating the health service, with the consequent alteration of the rights to privacy and freedom of the patient, who may be subject to palliative procedures or clinical research. The Constitutional Court, through the tutela action and supported by scientific research, may suggest the implementation of policies for the protection of sensitive clinical data, which will take into account the precautionary principle, according to which, whenever there is a danger of serious and irreversible harm – in this case to the patient, the lack of absolute scientific certainty must lead to the adoption of effective measures to prevent the violation of the rights of the individual, by the private or state entity (Congress of the Republic of Colombia, 1993).

## Conclusions

In the bibliographic research carried out, it was found that the medical service provider can violate the patient's rights to freedom and privacy, rights that are closely linked to the protection of clinical data. That is, the patient's habeas data is incorporated into the so-called digital tests. At the same time, it was established that when weighing the rights to privacy and information, the protection of habeas data prevails through constitutional actions such as those of group, popular, compliance and guardianship, which seek the prevention and in turn the sanction for the violation of the human rights of the user of the health service. Finally, it was determined that the burden of proving the absence of violation of the right to habeas data corresponds to the provider of medical services, thus configuring the so-called liability for alleged fault of the medical service. That is, it is up to the generator of the fault to prove the absence of fault, a situation that safeguards the rights of the patient, considered the weak party in the contractual relationship.

## References

Adzel, J. (1987). *How do you work the skin?*. Barcelona: Editorial de Vecchi.

Alexy, R. (2012). *Institutionalized reason: the jurisprudence of Robert Alexy*. Oxford University Press.

- Álvarez, R. (2014). Patient and sufferer. *Journal of the Faculty of Medicine (Mexico)*, 57(5), 3-4.
- Arboleda, A. (2014). Vision of the Constitutional Court, regarding the rights of freedom of expression and information: a relationship from the right to a good name, privacy and honor. *Lasallian Journal of Research*, 11(2), 159-167.
- Arroyo, R. (2013). Three out of four Europeans consider that disclosing personal information is normal. *Channelbiz Spain*. Retrieved from <https://www.channelbiz.es/2013/01/28/tres-de-cada-cuatro-europeos-considera-que-desvelar-informacion-personal-es-normal/>
- Bernal, O., & Barbosa, S. (2015). The new health reform in Colombia: the law, insurance and the health system. *Salud pública de México*, 57(5), 433-440.
- Botero, A., Gamboa, S., & Valdivieso, K. (2024). Reflections on artificial intelligence applied to the administration of justice. *Revista Jurídica Mario Alario D'Filippo*, 16(33), 160–183. <https://doi.org/10.32997/2256-2796-vol.16-num.33-2024-4887>
- Cabezas, J. (2023). Personal data processing and compliance in Colombia. *Journal of the Faculty of Law and Political Science*, 53(138), 1-25.
- Cadena, A. (2017). Between presumed fault and objective liability. *Vía Iuris Magazine*, (22), 45-59.
- Canosa, A (2014). Transnational constitutional procedural law. The process before the Inter-American Court of Human Rights. *Neoprocesalismo*, (Universidad Juárez Autónoma de Tabasco, Villahermosa).
- Castrillón, J., García, J., Anaya, M., Rodríguez, D., De la Rosa, D., & Caballero, C. (2008). Databases, search engines and thematic indexes: fundamental tools for medical practice. *Revista Salud Uninorte*, 24(1), 96-119.
- Congress of the Republic of Colombia (1993). [Law 99 of 1993]. Retrieved from [https://www.oas.org/dsd/fida/laws/legislation/colombia/colombia\\_99-93.pdf](https://www.oas.org/dsd/fida/laws/legislation/colombia/colombia_99-93.pdf)
- Congress of the Republic of Colombia (1997). [Law 393 of 1997]. Retrieved from [http://www.secretariasenado.gov.co/senado/basedoc/ley\\_0393\\_1997.html](http://www.secretariasenado.gov.co/senado/basedoc/ley_0393_1997.html)
- Congress of the Republic of Colombia (2007). [Law 1122 of 2007]. Retrieved from <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/DIJ/ley-1122-de-2007.pdf>
- Congress of the Republic of Colombia (2010). [Law 1425 of 2010]. Retrieved from [http://www.secretariasenado.gov.co/senado/basedoc/ley\\_1425\\_2010.html](http://www.secretariasenado.gov.co/senado/basedoc/ley_1425_2010.html)
- Congress of the Republic of Colombia (2012). [Statutory Law 581 of 2012]. Retrieved from [http://www.secretariasenado.gov.co/senado/basedoc/ley\\_1581\\_2012.html](http://www.secretariasenado.gov.co/senado/basedoc/ley_1581_2012.html)
- Political Constitution of Colombia [Const.] (1991). Bogotá D.C.: Legis.
- Constitutional Court of Colombia (1992). [Judgment T-419 of 1992]. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/1992/T-419-92.htm>
- Constitutional Court of Colombia (2009). [Judgment C-409 of 2009]. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/2009/C-409-09.htm>
- Constitutional Court of Colombia (2011a). [Judgment C-748 of 11]. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/2011/c-748-11.htm>
- Constitutional Court of Colombia (2011b). [Judgment C-630 of 2011]. Retrieved from <http://www.corteconstitucional.gov.co/relatoria/2011/c-630-11.htm>
- Constitutional Court, Eighth Chamber for the Review of Tutelas. (February 10, 2020). Judgment T-043 of 2020 [M.P: Reyes, J.].
- Constitutional Court. Ninth Chamber of Review. (September 4, 2018). Judgment T-364 of 2018 [M.P: Rojas, A.]
- Constitutional Court. First Chamber of Review. (April 3, 2018). Judgment T-114 of 2018 [M.P: Bernal,C.]
- Correa Fernández, M. de J., Luna Salas, F., & Pacheco Benjumea, M. P. (2022). Probative Value of the

- Electronic Document in the Light of the Digitalization of Justice in Colombia. *Revista Jurídica Mario Alario D'Filippo*, 14(28), 302–324. <https://doi.org/10.32997/2256-2796-vol.14-num.28-2022-3976>
- Cruz, H. (2016). Civil procedure based on the General Code of Procedure. Ediciones Uniandes-Universidad de los Andes.
- De Brigard, A. (2004). Informed consent of the patient. *Colombian Journal of Gastroenterology*, (19)4, 277-280.
- Dellepiane, A. (1961). *New theory of evidence*. Temis Publishing House.
- Deu, T. A. (2011). *Illicit evidence: (a comparative study)*. Marcial Pons.
- Díaz, V. (2013). Biometric systems in criminal matters: a comparative study. *IUS Magazine*, 7(31), 28-47.
- Echandía, H. D. (2002). *General theory of judicial evidence*. Themes.
- Esguerra, J. (2004). *The constitutional protection of the citizen*. Bogotá D.C.: Legis.
- Estrada Vélez, S., Luna Salas, F., Tirado Pertuz, C., Flórez Muñoz, D. *Colombian constitutional procedural law: fundamentals, actions and their evidentiary regimes*. Bogotá: Grupo Editorial Ibáñez, 2023.
- Estrampes, M. M., & Domínguez, M. S. (2004). *The concept of unlawful evidence and its treatment in criminal proceedings*. Bosch.
- Figuroa, W. (2014). *The new language we must teach*. Retrieved from <https://willyfiguroa.wordpress.com/tag/infografia/>
- Flo, G. D. (2014). The legal validity of electronic documents in Colombia from their legislative and jurisprudential evolution. *Verba Iuris*, (31), 43-71.
- Foxhall, K. (2020, October 7). Data protection laws apply to anyone who collects information about a living person. So what do researchers in the arts, humanities, and social sciences need to know? [https://blog.scielo.org/es/2020/10/07/leyes-de-proteccion-de-datos-investigadores-shape/#:~:text=Datos%20personales%20de%20categor%C3%ADa%20especial%20\(sensitive\)&text=Previously%20known%20as%20%E2%80%9Cdata%20sensitive,life%20sexual%20or%20orientation%C3%B3n%20sexual.](https://blog.scielo.org/es/2020/10/07/leyes-de-proteccion-de-datos-investigadores-shape/#:~:text=Datos%20personales%20de%20categor%C3%ADa%20especial%20(sensitive)&text=Previously%20known%20as%20%E2%80%9Cdata%20sensitive,life%20sexual%20or%20orientation%C3%B3n%20sexual.)
- Gómez-Córdoba, A. I., Arévalo-Leal, S., Bernal-Camargo, D. R., & Rosero de los Ríos, D. (2020). The right to personal data protection, digital technologies and the COVID-19 pandemic in Colombia. *Journal of Bioethics and Law*, (50), 271–294. <https://doi.org/10.1344/rbd2020.50.31830>
- Guzmán, F., & Arias, C. (2012). The medical history: a fundamental element of the medical act. *Colombian Journal of Surgery*, 27(1), 15-24. <https://www.revistacirugia.org/index.php/cirugia/article/view/195>
- Hernández Aros, Iudivia, Plazas Estepa, R. A., & Flórez Guzmán, M. H. (2018). Evidence in Colombia and its impact on the commission of an audit: a perspective from the Pentagon of fraud. *Revista Republicana*, 25, 117-134. <https://ojs.urepublicana.edu.co/index.php/revistarepublicana/article/view/487>
- Herrera, J. C., & Pérez, J. (2021). Ex officio evidence in the construction of procedural truth. *Revista de Derecho*, (55), 217-234. <https://cientificas.uninorte.edu.co/index.php/derecho/article/view/13360/214421445431>
- López Oliva, J., Vargas Chaves, I., & Alarcón Peña, A. (2022). The medical record: a means of stellar evidence in medical liability processes. *Revista Jurídica Mario Alario D'Filippo*, 14(27), 137–154. <https://doi.org/10.32997/2256-2796-vol.14-num.27-2022-3813>
- López Oliva, J. (2013). The medical liability of the State or private health providers derived from defective breast prostheses. *Prolegomena*, 16(31), 131–153. <https://doi.org/10.18359/dere.724>
- Miranda, D. (2023, October 9). Personal Data and its regulation in Colombia (sensitive data, public, semi-private and private data): approach, scope of application and content.

- <https://telecomunicaciones.uexternado.edu.co/los-datos-personales-y-su-regulacion-en-colombia-datos-sensibles-datos-publicos-semiprivado-y-privado-enfoque-ambito-de-aplicacion-y-contenido/>  
Niño García, D. Y. (2022). Personal data and its legal risks from the digital transformation in e-commerce. *CES Law Journal*, 13(1), 70–89. <https://doi.org/10.21615/cesder.6386>
- Ojeda Pérez, J.E., Rincón Rodríguez, F., Arias Flórez, M., Daza Martínez, L. (2010). Computer crimes and the current legal environment in Colombia. *Cuadernos de Contabilidad*, 11(28). <https://revistas.javeriana.edu.co/index.php/cuacont/article/view/3176>
- Parra Guzmán, M. F. (2010). *Burden of proof in medical liability*. Bogotá DC: Edificios Doctrina y Ley Ltda.
- Parra, J. (2006). *Manual of Evidentiary Law*. Fifteenth edition. Expanded and updated. Editorial ABC.
- Peña Cuellar, D., Vidal Lasso, A., & Buriticá Salazar, A. (2024). The metaverse: an analysis from the perspective of human rights. *Revista Jurídica Mario Alario D'Filippo*, 16(33), 202–218. <https://doi.org/10.32997/2256-2796-vol.16-num.33-2024-4889>
- Quiroga Natale, E. A., Luna Salas, F. (2025). The evidentiary defect in the Tutela Action against judicial decisions: scope and procedural criteria in Colombia. *Academia & Derecho Journal*, Year 16, No. 30, pp. 1-19.
- Rodríguez, S. & Alonso, N. (1997). *Legal mechanisms for environmental protection*. Bogotá D.C.: Ediciones Jurídicas Gustavo Ibáñez.
- Salazar Vargas, C. (2009). The evaluation and analysis of public policies. *Opera*, 9(9), 23–51. Retrieved from <https://revistas.uexternado.edu.co/index.php/opera/article/view/686>
- Sánchez Hernández, L. C. (2021). Strict liability for dangerous activities in Colombia Critical analysis of the CSJ-SC2111 judgment of 2021. *Journal of Private Law*, (42), 377–391. <https://doi.org/10.18601/01234366.42.14> (Original work published December 9, 2021)
- Londoño Sepúlveda, N. (2010). The use of ICTs in the judicial process: a proposal for online justice. *Journal of the Faculty of Law and Political Science*, 40(112), 123-142. <https://revistas.upb.edu.co/index.php/derecho/article/view/3775>
- Superintendence of Industry and Commerce of Colombia (2015). *Habeas data Argentina*. Retrieved from <https://habeasdataargentina.files.wordpress.com/2015/03/habeas0309-1000.jpg>
- Superintendence of Industry and Commerce. (n.d.) *On the protection of personal data*. <https://www.sic.gov.co/content/sobre-la-protecci%C3%B3n-de-datos-personales>
- Tirado Pertuz, C., Luna Salas, F., Barreto Lezama, A. (2024). The tutela action as a means of protection in the right to private property and the autonomy of the will in Colombia. *Intertemas Journal*, v. 32 (2024). <http://intertemas.toledoprudente.edu.br/index.php/INTERTEMAS/article/view/10276>
- Tornabene, I. (2015). Personal data protection: reviewing a bit of history, from the Third Reich to Facebook. *Digital Magazine Elderechoinformático.com*, 20.
- Toro Cortés, L. M., & Vásquez Lara, M. A. (2016). Impact of the medical expert opinion on liability processes derived from the provision of health services: the case of the Center for Studies in Law and Health – CENDES. *CES Law Journal*, 7(2), 5–12. Retrieved from <https://revistas.ces.edu.co/index.php/derecho/article/view/3902>
- Torres, M. & Iregui, P. (eds.) (2020). *Constitutional actions: reflections on their progress and challenges*. Bogotá, D. C.: Editorial Universidad del Rosario. Hanns Seidel Foundation.
- Ugarte Cataldo, J. L. (2010). Labor protection of fundamental rights and burden of proof. *Pro jure Revista de Derecho - Pontificia Universidad Católica de Valparaíso*, 33(2). Retrieved from <https://www.projurepucv.cl/index.php/rderecho/article/view/707>
- Velásquez Gavilanes, R. (2010). Towards a new definition of the concept of "public policy". *Desafíos*, 20, 149–187. <https://doi.org/10.12804/revistas.urosario.edu.co/desafios/a.433>

Yáñez-Meza, D. A., & Castellanos-Castellanos, J. A. (2016). The right to evidence in Colombia: favorable and critical aspects of the reform of the general code of procedure in substantive and procedural law. *Vniversitas*, 65(132), 561-610. <https://revistas.javeriana.edu.co/index.php/vnijuri/article/view/16578>.