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Colombia
Litigation

Contributor

Pinilla González &
Prieto Abogados

Felipe Pinilla

Founding Partner | fpinilla@pgplegal.com

This country-specific Q&A provides an overview of litigation laws and regulations applicable in Colombia.

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Colombia: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

The main methods of resolving disputes in Colombia are informal negotiation, conciliation, litigation and arbitration. Informal negotiation can be done either directly by the parties or through their legal representatives. The conciliation hearing is mandatory at the beginning of the process, but parties are not obliged to conciliate. If they fail to reach an agreement, the normal litigation process continues and is held before judges specializing in civil, commercial or consumer law. Arbitration is commonly used in medium-sized and large companies and is held before the Arbitration and Conciliation Center of the Chamber of Commerce.

2. What are the main procedural rules governing litigation in your jurisdiction?

For commercial litigation before ordinary courts, the main procedural rule is the General Code of Procedure (GCP). For arbitration, the rule is the National and International Arbitration Statute and, as supplement, the GCP when necessary. Both are national laws and apply to all commercial disputes.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

In Colombia, the structure of local courts is the same for the whole country, with a two-tier system divided into levels: municipal and circuit judges, superior courts for each judicial district and, finally, the Supreme Court as final court of appeal. It works as second and closing instance in some cases, and, in others, as judge when extraordinary appeals are filled.

The level of court where the process starts, depends on the matter, on the quantity of the dispute and on the place where the facts occurred or the company has its administration, depending on the case.

Parallel to all proceedings, the Constitutional Court is the final court in constitutional matters that may be involved in each process.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

It depends on the matter: commercial litigation before ordinary courts usually lasts 3 to 5 years; arbitration, 16 to 24 months; and disputes related to consumer law typically take between 2 and 4 years to be resolved.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Hearings are public, but it is not usual to have audience at commercial hearings. Regarding documents, as a rule the file is considered public with some exceptions expressly regulated by law. In arbitration, the rule is confidentiality.

6. What, if any, are the relevant limitation periods in your jurisdiction?

It depends on the subject matter: the ordinary limitation period is five years for rights related to real estate and three years for movable property, which may vary depending on the subject matter or the specific goods involved in the case, with a maximum of ten years as a general rule, which constitutes the extraordinary limitation period.

Regarding commercial contracts, non-contractual civil liability has a limitation period of ten years, and contractual liability, five years as a rule. However, this period may vary depending on the terms of the contract, the obligation and the warranty of the specific product, as is the case in construction, where the “ten-year warranty” is the standard for failures in structural elements.

Arbitration does not have a specific statute of limitations, because it is regulated by the provisions of substantive law. Finally, with respect to legal civil or commercial actions, each one is related to the type of liability and also depends on the subject matter, which in no case may exceed ten years.

7. What, if any, are the pre-action conduct

requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

As a general rule, a pre-action conciliation hearing is mandatory in declaratory judgments and in cases where conciliable rights are being discussed. However, if the parties fail to reach an agreement, the process continues. This also depends on the contract: if it has a conciliation or mediation clause, parties are obliged to comply with it before initiating court proceedings.

On the other hand, cases in which the plaintiff asks for precautionary measures, the pre-action conciliation is not mandatory.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Although service is always necessary, the opportunity varies on the type of process. Generally, a lawsuit is commenced by the filing of a complaint with the court, by the plaintiff's agent, who must provide the defendant's notification information. First, the judge checks over the legal requirements. If he finds that something is missing, he orders the plaintiff to remedy it. If the agent complies with the requirement or if, from the beginning the claim fulfills all requirements, the judge issues an order: (i) accepting the lawsuit, and (ii) including a service order to notify the defendant at the e-mail and physical address provided by the plaintiff. After being notified, the defendant must expressly state whether he or she wishes to be notified digitally or physically of any other actions taken in the process.

Since the pandemic, all judicial proceedings in Colombia are conducted digitally. While parties and their representatives can request service at their physical addresses, this is often not the case.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

The procedure law establishes the jurisdiction for all courts nationwide. It is classified by matter, place where the facts occurred or where the defendant lives or has his administration and amount of the claim. Also, all jurisdictions have a residual jurisdiction rule which helps to determine jurisdiction in cases not provided for by law. The court reviews the lawsuit and the rules of jurisdiction and, in the acceptance order, also determines whether it has jurisdiction over the claim or not.

10. How does the court determine which law governs the claims in your jurisdiction?

The Constitution and the law clearly and expressly establish which law governs each type of claim. Since the regulation applies nationwide, it is not common to have big discussions around this topic.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

Claims can be disposed of without a full trial when the court has no jurisdiction over the claim; when having jurisdiction the party does not comply with the court's requirements to amend the claim; when the claim is filed anonymously or is clearly unfounded; or when the defendant sufficiently proves, at the beginning of the proceedings, that the case has already been judged by another court or has been settled by conciliation.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

The procedure law provides the types of precautionary measures that the plaintiff can ask for in the claim. The main ones are seizure, registration of the claim and confiscation of goods, but the law has broad criteria for requesting other types of measures related to the case and the plaintiff's claims.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

After service of the summons and complaint, the defendant, through his representative, must serve a response in which he must: make a statement regarding the facts and claims set forth in the claim; provide documentary evidence of his legal position; request the decree of testimonies and provide the notification information of the witnesses; request the decree of evidence that is not in his power; make any opposition statements to the plaintiff's legal position or a motion to dismiss. He can also request the court to call for guarantor and/or joint litigant, if he finds that there is a third party responsible in the case, either for guarantor or for having any type of responsibility in the facts being discussed.

The defendant can also, in a parallel document, file a

counterclaim against the plaintiff if the facts and the parties are the same and if the court has jurisdiction over it.

The usual timetable can vary between five and twenty business days, depending on the type of procedure.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

The plaintiff must provide copy of his evidence as an annex of the lawsuit, which is provided to the defendant as soon as he is notified. In the same way, the defendant must provide a copy of the evidence as an annex of his response. Confidential or public interest information should only be provided if there is a court order to do so.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witnesses testify at a hearing before the judge and the parties. If they have previously made a deposition about the facts of the case, they must confirm it at the hearing for it to be considered evidence. If the witness provides any documentary evidence during the hearing, the representative who requested their testimony must announce what type it is and allow cross-examination before asking about it. A copy must be provided to the court and the counterparty as soon as the hearing concludes.

Witnesses are interviewed in this order: the party who requested their testimony, the counterparty and the judge, who may, in any case, interrogate the witness at any time during the hearing.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

The General Code of Procedure establishes that parties may request the court to allow them to submit expert evidence. Even though the court may also order it ex officio, the current trend, according to jurisprudence, is to prioritize expert opinions.

Parties are allowed to provide one expert evidence per topic. If requested, the party must provide, with the claim or the response, a document signed and prepared by the expert. The document must include address, cellphone number and ID of the expert; his profession, studies and all the diplomas or certifications; a list of his academic publications in the last ten years; a list of the cases in which he testified as expert in the last four years; and a statement of the methodology used to form his opinion. If the time to provide the document is not enough, the party may announce it in the claim or response and provide it within ten business days.

The counterparty may summon the expert to a hearing to be interviewed about his expert opinion, provide counter-expert evidence, or both. At the hearing, cross-examination is allowed.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Decisions regarding terms and procedure can't be appealed. Substantive decisions, whether final or interim, may be requested for reconsideration before the same court or on appeal to a higher court. The timescale is immediate if the decision is issued in a hearing and three business days if it is not issued in a hearing.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

Exequatur, established by the General Code of Procedure, regulates the conditions for the recognition of foreign judgments: generally, these are recognized according to the rules established in international treaties between Colombia and the country in question, whether a court judgment or an arbitration award.

The judgment for which recognition is sought must also meet the following conditions: it cannot rule on real property rights over real estate located in Colombia; the decision cannot be contrary to Colombian law, except with respect to procedural law; the judgment must be final; the copy of the judgment submitted to the court must be legalized; the subject matter of the judgment cannot fall within the exclusive jurisdiction of Colombian judges; there cannot be another judgment or proceeding on the same facts or subject matter issued by a national court; and the exequatur requirement must be met.

For exequatur, the party requesting recognition must submit the judgment to the Supreme Court, summoning

the affected party. The requesting party must request relevant evidence, and the Court must provide a copy to the affected party, who may also request their own evidence. The court issues a ruling ordering the evidence it deems relevant and convenes a hearing to examine it, hear the parties' final arguments, and issue a final judgment.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

A part of the costs of litigation can be recovered, but the amount awarded by the judge is generally less than the actual cost of the litigation.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

The main collective redress for reparation are judicial popular and class legal actions, and administrative procedures for reparation for victims of the armed conflict, among others.

All these mechanisms pursue comprehensive reparation, which includes material and symbolic measures of reparation for the affected communities and economic compensation for groups that have suffered harm due to a common cause.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

After service of the summons and complaint, the defendant must serve a response in which he can request the court to call for guarantor and/or joint litigant, if he finds that there is a third party responsible in the case, either for guarantor or for having any type of responsibility in the facts being discussed.

The defendant can also, in a parallel document, file a counterclaim against the plaintiff if the facts and the parties are the same and if it the court has jurisdiction over it.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

In Colombia, third parties are not allowed to finance litigation, but each party may sell its litigation rights to a third party who will replace it in the process and receive any financial compensation, if any.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

The impact of the COVID-19 pandemic on litigation in Colombia has been positive. Before the pandemic, some proceedings were already conducted orally, and procedural legislation provided for the possibility of holding hearings electronically; however, this option was rarely used.

With the pandemic, oral and virtually proceedings were accelerated, and since then, most judgments are conducted virtually, with some specific exceptions, primarily in cases before the Supreme Court, some arbitration and criminal matters, and the protection of children's rights.

Virtualization has accelerated the duration of the process and made litigation more efficient, as counsels and parties don't have to travel to the court. Mechanisms have been developed to verify the receipt of emails and protect files and documents, which makes the judgment more secure and facilitates its access and review.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The main advantages of litigating international disputes in Colombia are confidentiality, efficiency and shorter terms compared to ordinary court proceedings, as well as the possibility to choose specialized arbitrators.

The flexibility of the procedural rules can be an advantage in terms of choosing rules that suit to the needs and wishes of the parties, but it can be a disadvantage when they are not sufficiently regulated.

The main disadvantages are the high costs. In the same sense, the arbitration award is not appealable in Colombia. The only judicial mechanism for challenging it is the extraordinary appeal for annulment, limited to grounds expressly provided for by law and without any possibility for the judge to reexamine the merits of the

dispute decided by the arbitrators.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Over the next five years, the most likely areas of growth for commercial disputes are disagreements arising from technology services, disputes over data protection, intellectual property rights, and over the scope and limits of the obligations of the trustee and other fiduciary parties, particularly real estate trustees.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Technology is making commercial litigation more efficient and it will continue to be so, since legal research is being easier and faster with artificial intelligence programs. Legal bots provide valuable tools to prepare final allegations, make timetables, analyse documents, extract relevant data of the judicial file, identify the main points of the counterpart, transcript hearings and compare legal documents or jurisdictions regulation, among others. All these tools make easier and faster the preparation of the cases and of the hearings and gives attorneys more time to attend clients and new cases.

Operating costs in legal Firms shall decrease for artificial intelligence may allow to have smaller and quicker teams. In most cases, client meetings are conducted virtually, allowing for more requests to be handled daily and for meeting with clients outside their jurisdiction without having to travel.

In the same sense, legal Firms are being pushed to provide digital products such as templates, basic contracts, legal design and judicial review, among others, that may be the new path of legal advice, especially for startups.

Contributors

Felipe Pinilla
Founding Partner
fpinilla@pgplegal.com