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ORIGINAL

Role of registry offices regarding the expiration of precautionary measures according to Law 1579 of 2012

Rol de las oficinas de registro respecto a la caducidad de las medidas cautelares según la Ley 1579 de 2012

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ABSTRACT

In the context of Colombian legislation, the registry offices of public instruments play a role of significant relevance. These offices operate as intermediaries for the materialization of the transfer of real estate, pursuant to Article 756 of the Civil Code. In this analysis, we address the crucial role of the registry offices of public instruments in relation to the expiration of precautionary measures, framed in Article 64 of Law 1579 of 2012. Since more than ten years have passed since the implementation of this provision, the processes involving the renewal of precautionary measures have been addressed in correspondence with the interested parties and their legal representatives. In order to understand this approach, a methodology based on documentary review has been adopted, analyzing relevant research on the subject. Through this analysis, it has been possible to corroborate the usefulness and relevance of forfeiture as it has been conceived in the legislation. It is evident that precautionary measures were designed with the purpose of ensuring compliance with judicial rulings, in response to a global reality in the field of the administration of justice: the time required to initiate, develop and conclude a legal process. In the Colombian context, this duration is excessive. However, these measures are essential to safeguard the results of judicial decisions and have been conceived as a response to the prolonged time involved in carrying out a legal process in various justice systems (Case T-356/18, Constitutional Court, 2018).

Keywords: Civil; Liability; Process; Regulations.

RESUMEN

En el contexto de la legislación colombiana, las oficinas de registro de instrumentos públicos desempeñan un rol de significativa relevancia. Estas oficinas operan como intermediarias para la materialización de la transmisión de bienes inmuebles, conforme al artículo 756 del Código Civil. En este análisis, se aborda la función crucial de las oficinas de registro de instrumentos públicos con relación a la caducidad de las medidas cautelares, enmarcada en el artículo 64 de la Ley 1579 de 2012. Dado que han transcurrido más de diez años desde la implementación de esta disposición, se han abordado los procesos que involucran la renovación de las medidas cautelares en correspondencia con las partes interesadas y sus representantes legales.

Para comprender este enfoque, se ha adoptado una metodología que se basa en la revisión documental, analizando investigaciones relevantes sobre el tema. A través de este análisis, se ha logrado corroborar la utilidad y pertinencia de la caducidad tal como se ha concebido en la legislación. Es evidente que las medidas cautelares fueron diseñadas con el propósito de asegurar el cumplimiento de sentencias judiciales, en respuesta a una realidad global en el ámbito de la administración de justicia: el tiempo necesario para iniciar, desarrollar y concluir un proceso legal. En el contexto colombiano, esta duración es excesiva. Sin embargo, estas medidas son esenciales para salvaguardar los resultados de las decisiones judiciales y han sido concebidas como una respuesta al tiempo prolongado que conlleva llevar a cabo un proceso legal en diversos sistemas de justicia (Caso T-356/18, Corte Constitucional, 2018).

Palabras clave: Civil; Responsabilidad; Proceso; Normatividad.

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INTRODUCTION

Article 58 of the Political Constitution of Colombia establishes the right to private property, stating that it must be guaranteed when it has been acquired in accordance with civil laws and may not be ignored on the basis of subsequent laws, thus giving rise to the need to analyze the role played by the offices of registration of public instruments,[1] who have a main function in relation to real estate, to perform a registration with which the tradition of the same is perfected and also serve, as its name indicates, to register the legal situations of a property, not only for the tradition but also for other aspects such as the encumbrances that it supports.[2,3,4]

Colophon of the above, the Department of Registration of public instruments has an important function, which is to register, with respect to a real estate property, the legal situations that arise with respect to it,[5] providing legal certainty to those who acquire property based on the study that is made to the title of tradition that it issues, there being a controversial issue such as the expiration of the registration of the precautionary measures and special contributions, which in accordance with the provisions of Article 64 of Law 1529 of 2012,[6] occurs after ten years counted from its registration, and may be interrupted when the renewal of the measure is decreed, in any case, it is required for the operation of this legal phenomenon, the action of the registrar, who through a motivated administrative act must proceed to cancel the precautionary measure.[7,8]

It is therefore important to make a conceptual approach to the application of this article since, upon verifying the databases and the study of the doctrine and case law on the subject, it is found that there is no detailed development of such a situation. There are references related to concepts of the Superintendence of Notaries and Registry, but no cases of application for expiration have been developed.[9,10]

It is essential, then, to describe the theoretical aspects around the categories analyzed, as well as the state of the art and the legal framework in order to expose the different theoretical contributions, research carried out, and the regulatory framework in which this research is framed and which aims to define the role of public registry offices in relation to the precautionary measures in accordance with Law 1579 of 2012.[11]

The autonomy in the execution of the registry work carried out by the Public Instruments Registry Offices, which operate under the jurisdiction of the Superintendence of Notaries and Registry, is supported by Decree 2163 of 2011. This decree, in its Article 30, stipulates that: "the registrars of public instruments are responsible for the technical and administrative operation of such offices. In addition, they are assigned the task of fulfilling the functions established by law and those defined by the National Government under the parameters of this decree. In this context, the chief registrars play the role of coordinating both technically and administratively the sectional offices under their jurisdiction".[12]

The competence attributed to the Public Instruments Registry Offices finds its basis in Law 1579 of 2012, also recognized as the Public Instruments Registry Statute. This legislation establishes that the act of registering public instruments represents a public service provided by the State. Such service is exercised through the work of the Registrars of Public Instruments, who, in line with the legal provisions in force, play the role of facilitators in this area.[13] The purpose of this activity and the effects derived from it are duly enshrined in the relevant laws. In particular, the registration of real estate, an essential public service, implies the registration of the most relevant aspects of the acts, contracts, or decisions subject to registration, as well as those that entail their cancellation, in a real estate registry. The purpose of this registration is to provide any interested individual with the opportunity to continuously access accurate information about the legal status of the real estate that is registered (Law 1579 of 2012).[14]

The main function attributed to the real estate registry is to serve as an instrument for the transfer of ownership of real estate assets and other real rights over them. In addition, its purpose is to provide a platform of publicity for acts and agreements involving the transfer of ownership of such assets or the imposition of encumbrances and limitations thereon.[15] This disclosure allows the legal status of real property to be accessible to all, which is crucial for such acts to have binding effects vis-à-vis third parties. The primary mission of the Public Instruments Registry Office is to expedite and guarantee the transmission and disclosure of acts and agreements of a public nature in order to promote the historical continuity and visibility of such transactions. This task is regulated by Law 1579 of 2012, which confers autonomy in the execution of their responsibilities to the Registrars, who exercise their authority in the registry circle defined by the legislation.[16]

In the area of precautionary measures, it is suggested that their purpose is to prevent the damages caused by the violation of the right from being aggravated by the inevitable delay in the judicial provision (periculum in mora). This precautionary activity is designed to provisionally anticipate the foreseeable effects of the right while awaiting the final decisions that guarantee its observance. Similarly, it is argued that the precautionary regime represents, in essence, an ex officio decision seeking to establish a temporary legal status until the right in dispute is defined.[17]

In relation to this topic, it is pertinent to consider the research whose title, "Systematization of the Public Registry Service in the Registry Offices of Public Instruments in Colombia," pursues the purpose of exposing the way in which the modernization of the Registry Offices of Public Instruments has been carried out through the implementation of solutions based on Information and Communication Technologies (ICT). In this context, a comprehensive evaluation of these transformations is being carried out in order to determine their impact on the expansion of the services offered, the optimization of access to information, and the improvement in the provision of attention to citizens. An additional objective is to suggest measures to optimize the provision of the public real estate registry service.[18] To achieve this, a qualitative approach was used, where a documentary review was carried out that addressed concepts related to technology and innovation in public administration.[19]

Additionally, a relevant precedent on this subject is entitled "New Advances and Challenges of the Registry Office and Public Instruments in Colombia." This presentation highlights the essential nature of the registry of real property, which is configured as a public service supported by the State and managed operatively by the officials in charge of the Registries of Public Instruments. Given its essential role in the country's Legal Security, it is emphasized that, in the past, this work was characterized by obsolescence

and disorganization, which caused inconveniences in the users' procedures.[20] However, with the enactment of Law 1579 of 2012, a significant change originated. The purpose of the research was to learn about the recent advances and challenges of the registry office and public instruments in Colombia. For its development, a documentary review methodology was adopted.[32]

The research carried out under the title "Precedence of ex officio cancellations in the registry of public instruments" was focused on determining whether or not it is admissible to perform ex officio cancellations within the system of registration of public instruments in the institutions designated for such purpose.[22] The research aimed to identify under what circumstances the registrar may cancel annotations automatically and when a request by third parties is required for the cancellation of annotations in the real estate registration folios.[23] This study is particularly significant because, in some situations where ex officio cancellation by the registrar might be appropriate, the request is required to be instigated by one of the parties involved. Whereas, on other occasions, the registrar has the power to cancel certain notations on his own, following legislation that supports this decision.[24]

In a similar approach, an exploration is undertaken entitled "Inefficiency and legal implications of the inadmissibility of registration in the Public Registry of Deeds offices, due to errors in the description, size or boundaries of real estate".[25] The central purpose of this study lies in the exploration and proposal of adjustments to a specific approach within the regulatory framework of the property registration system in Colombia. In this context, the author carries out an exhaustive analysis of the requirements related to the transcription of details, such as the description, extension, and boundaries of real estate in the documents filed before the public registry offices in the country. To achieve this objective, a documentary approach methodology is used, supported by a dogmatic approach to the analysis.[26]

In a complementary manner, an investigation entitled "Expiration of the precautionary measure of seizure, sequestration, and suspension of the dispositive power of real estate in the processes of extinction of ownership in Colombia" is carried out.[27] The central focus of this study is oriented toward the evaluation of the viability of precautionary measures in the context of the jurisdiction of constitutional rank. In addition, the authors carry out an exhaustive analysis of the doctrinal foundations underlying the figure of forfeiture in the field of registry activity. The methodology used for this research is based on a qualitative approach supported by a documentary technique focused on legal exploration.[28]

Within the regulatory framework, Law 1579 of 2012 emerges, which establishes the statute governing the registry of public instruments, including additional provisions that regulate this specific area in detail. Complementing this legal structure, we find Resolution 10454 of 2022, which is presented as a normative instrument that prescribes the obligation to create specification codes intended for acts that must be submitted for registration in the Public Instruments Registry Offices. Likewise, this resolution provides a series of additional guidelines that guide the effective implementation of these processes.[29]

In the exercise of its legal powers, especially those conferred by paragraph 4 of Article 8 of Law 1579 of 2012, as well as numerals 26 of Article 11 and 19 of Article 13 of Decree 2723 of 2014, in addition to Decree 1420 of 2022, and taking into account various aspects, the strategic relevance of the Public Instruments Registry Offices becomes evident. These offices, which operate under the jurisdiction of the Superintendence of Notaries and Registry, as established in Article 12 of Decree 2723 of 2014, acquire a fundamental role in the registry field.[30]

The creation of registry specification codes pursues the unification of the language used by the various Public Instruments Registry Offices at the time of registering acts or legal business related to real estate. This approach seeks to enhance the effectiveness and efficiency of the provision of the public registry service. This measure is based on Colombian legislation, which explicitly establishes the acts, titles, and documents that are subject to registration and that involve the constitution, modification, limitation, encumbrance, precautionary measure, transfer or extinguishment of ownership or other principal or accessory right in real estate.

METHOD

The present research adopts a qualitative approach based on observation and a detailed description of the phenomena in question. In this context, it is essential to highlight the distinctive characteristics of this approach. The researcher employing a qualitative approach uses a variety of data collection techniques, such as unstructured observation, open-ended interviews, documentary review, group discussion, evaluation of individual experiences, recording of life histories, as well as interaction and introspection with groups or communities.

Within the descriptive scope of this research, descriptive research implies the detailed characterization of facts, phenomena, individuals, or groups, with the objective of establishing their structure or behavior.

In this context, the documentary collection method has been selected, which is a research tool that seeks to obtain information and data from specific documentary sources to be used in a specific research project. The choice of relevant documents depends on the researcher's capabilities, experience, and ability to discern clues that lead to their identification.

In relation to the tracking of academic articles, regulations, and documentary material, specialized search engines such as Google Academics, Scielo, Redalyc, and Scopus will be used. These platforms offer access to a diverse set of resources that are essential for the collection of relevant and updated information in this research.

RESULTS AND DISCUSSION

Preliminary considerations

In line with universal precepts, it is crucial to highlight the importance enshrined in Article 17 of the Universal Declaration of Human Rights, which establishes that all persons have the right to individual property and are exempt from being arbitrarily deprived of it. For its part, the American Convention on Human Rights, in Article 21, guarantees every person the right to the use and enjoyment of his property.[31] However, the law may condition this use and enjoyment to the social interest, subordinating the

disposition of property to reasons of public utility or social interest, with the condition that fair compensation is granted and that the legal provisions in force are respected.[32]

The Colombian constitutional framework, for its part, details in Article 58 the right to private property and other rights acquired according to civil laws. It also establishes that rights acquired under civil laws cannot be ignored or violated by subsequent laws. In the context of the application of laws that are issued for the public utility or social interest, when a conflict arises between the rights of individuals and the need supported by the law, the public or social interest must prevail over the private interest, as established in the constitutional order.[33]

The above has been studied by the Constitutional Court, reaching the following conclusion:

The notion of the right to private property, as established in the first clause of Article 669 of the Civil Code, refers to the "real right in a tangible thing, to enjoy and dispose of it, not being against the law or another's right." This perspective has led the Court to develop the concept of private property as a subjective right of a constitutional nature that a person holds over a tangible or incorporeal thing.[34] The essential core of this right entitles the holder to use, enjoy, exploit, and dispose of such property. However, this prerogative is not exempt from responsibilities towards society and the environment.

Judgment C-410 of 2015 emphasized that private property is a subjective right that empowers the owner to use, enjoy, exploit, and dispose of his property, provided that its inherent social and ecological functions are fulfilled.[35] These functions are in line with the constitutional duties associated with the Social State of Law, including the preservation of the environment, the safeguarding of the rights of third parties, and the promotion of equity and justice as the primacy of the general interest.[36]

In addition, the Constitution (Article 58) establishes the right to property, but this is not absolute. For the sake of public utility and social interest, limitations to this right are established. The figure of expropriation, for example, may be carried out by administrative means prior to compensation, which may be subject to contentious administrative action, even in relation to the price. This measure seeks a balance between the exercise of the right to property and the collective welfare.[37]

In consideration of the above, it is essential to emphasize that although private property is safeguarded, this right is not absolute and must be subject to the rules established by the State for that purpose.[38] It should be noted that this protection is supported by both supranational and national regulations aimed at its preservation. However, the right to private property is not exempt from exceptions, such as its social function, ecological considerations, public utility, or social interest, as well as in cases of extinction of ownership, criminal activities, illicit enrichment, damage to the treasury, or serious deterioration of morals.[39]

Within the set of rights included in this context are the rights in rem, which are materialized in the acquisition of real estate.[40] For the transfer of such property to be effective, the corresponding registration is required, as established in Article 756 of the Civil Code. This precept requires that the tradition of real estate be completed with the registration of the titles in the office of registration of public instruments. In addition, in line with this, affectations, easements, encumbrances, and precautionary measures must be registered.

Nature of the real estate registry and the role of the public instrument registry offices

The registration of public instruments has several objectives that seek to privilege the legal security in the acquisition of real estate since they serve as mechanisms to perfect its tradition, give publicity to the businesses that are made with them, and protect third parties that, although they do not have the real right of dominion, they do have an interest in it, verbi gratia the persons that based on a real estate have made loans under the modality of mortgages, which also by virtue of the mentioned article 756 of the Civil Code, must be registered.[41]

For the acquisition of real estate, two situations must concur: the title and the mode; that is to say, the first is the sale, and in second place its perfection, one of which, besides the delivery, is the registration, having that registration different purposes, in the case of the purchase and sale to register the business carried out between individuals that once inserted, becomes public and opposable, contributing to the protection of legitimate interests of the individuals.[42]

In addition, the function of the registry is a state function that is governed by a series of principles such as specialty, understood as that the goods must be registered by their nature as principal and accessory; also understanding that the registration is an area that constitutes a means of perfecting the tradition and allows the transfer of the ownership of the real estate as well as other real estate rights; it is an act of rotation since the registrar does not act ex officio, but at the request of a party; the registration is made based on the priority in which they were requested; and one of the most important, legality, since the registrar has the task of qualifying and examining what is going to be registered, and authorizing the recording of that note, which will be public. [43]

In addition to those above, we speak of registry legitimacy in the sense that the right that is registered exists in favor of the person who appears to have announced it in the note of the certificate of tradition.

It must be emphasized that the function of the registrar is requested, which, in accordance with the provisions of Article 3 of Law 1579 of 2012, means that the registrations in the certificates of tradition are made only at the request of the interested persons, the Notary, the administrative authorities or the judicial cells, for which it is required that whoever comes forward to register any business or transaction with a property, must prove the legal standing in the cause, attaching the formal requirements for it.[44]

The registration in the corresponding folio is so ritualistic that the existence of the full identification of the parties holding the real rights is required in order to avoid problems of homonymity and to provide the registry proceedings with greater legal certainty, allowing that with these data the property and the persons involved in a specific act related to it are clearly identified.[45]

The Constitutional Court has pointed out that these elements, as ritualistic as they may seem, allow for security in the real estate traffic:

The approach to the registration function in Colombia has specific purposes, among them publicity, security of real estate traffic,

and corresponding legal security. These purposes are governed by the principles of legality, good faith, and rogation, which establish the obligation for the interested parties to comply with the burdens established by law in order to access the registry service.[46]

In the context of this situation, it is crucial to analyze the interrelation that exists in Colombia between the registry and the expiration of precautionary measures. It should be noted that precautionary measures are based on an appearance of law or a plausible legal situation known as fumus boni iuris. This circumstance, in view of the threat implied by the delay in the process or the periculum in mora, motivates its implementation as an adequate mechanism to prevent the eventual lack of effectiveness of future judgment. In addition, certain legislations require that the person affected by the precautionary measures offers indications that he will try to evade compliance with the judgment, which is known as suspect debitoris.[47]

According to the above, in relation to the precautionary measure, this seeks to sustain the effects of a future judgment due to the delay with which the proceeding is carried out.[48]

Likewise, it is convenient to analyze the concept of precautionary measures within the scope of procedural law. These measures represent a jurisdictional tool whose purpose is to ensure the effectiveness of a judicial decision. Their purpose is to prevent, preserve, or guarantee the rights and interests at stake in the process. In this sense, they can be requested both spontaneously and at the request of the parties involved, playing a crucial role in preserving the integrity of judicial decisions.

In the context of precautionary measures within the executive proceedings, it is essential to highlight that their regulation is found in Book Four of the General Code of Procedure, specifically in Articles 599 and subsequent articles. Unlike the Code of Civil Procedure, where these measures were incorporated directly in the executive process (Articles 513 and following), in the new regulatory framework, these precautionary measures are presented independently.[49]

A distinctive and significant aspect lies in the nature of the precautionary measures available in this area. Mainly, options such as attachment and sequestration are contemplated. In a more particular look, when it comes to real estate subject to registration, the Supreme Court of Justice, in a judgment dated August 2, 1999, has established the need to carry out two complementary acts as an additional requirement.[50]

An interesting nuance arises when comparing executive proceedings with declaratory proceedings: in the executive area, a significant variant has been introduced. The interested party is no longer required to provide security for the execution of precautionary measures. This distinction is still notorious today.[51]

The evolution of these precautionary procedures in the executive branch demonstrates the effort to optimize the protection of the rights involved in the process without imposing additional requirements that could hinder the effectiveness of the measures.[52]

There is a regulatory vacuum in relation to anticipatory interim measures, which are those that are implemented before notifying the defendant in an arbitration proceeding of the existence of a claim against it. In Colombia, the Statute in the context of arbitration, the system for requesting interim measures presents a scheme that differs in its approach. In this dynamic, the request for interim measures is brought before the Arbitral Tribunal after it has been installed, as opposed to international approaches that employ emergency arbitrators, as seen in the practice of the International Chamber of Commerce. This situation highlights the latent need to consolidate a more robust regulatory framework in this area.[53]

Within the arbitration sphere, preventive, anticipatory, or pre-arbitral interim measures emerge as elements of great importance by offering a mechanism to the respondent parties before the arbitration proceedings take place. The purpose of these measures is to safeguard the rights of the affected party when faced with a legitimate fear of non-compliance by the counterparty. Such measures may be requested before the arbitral tribunal is formed, even before the arbitration proceedings begin, and are known as anticipatory interim measures. They can also be requested after the arbitral tribunal has already been established.[54]

In the Colombian context, there is consensus around the notion that arbitrators exercising judicial functions on a temporary basis should only issue this type of measure after the corresponding tribunal has been installed. This perspective could collide with Article 116 of the Political Constitution, which refers to the administration of justice as a permanent competence attributed to the judges of the State.[55]

This scenario points to the relevance of considering regulatory and procedural adjustments in relation to anticipatory interim measures in Colombian arbitration. Given the importance of arbitration as a dispute resolution mechanism and its growing adoption at the international level, it would be prudent to study and adopt practices that allow for a more efficient and effective application of precautionary measures in line with the needs and particularities of the national jurisdiction.[56]

With respect to real estate, it is therefore plausible that precautionary measures of seizure and sequestration are registered by order of judicial or administrative authority, which are perfected with the official document issued by the respective authority and which is taken to the registrar of public instruments accompanied with all the identifications that are necessary not only to comply with the registry legitimacy but also to identify with precision those who intervene in the act and the cause of the same.[57]

Now, it has been said that the registrar always acts at the request of a party, alluding that his action is requested, which makes sense because what moves or not an inscription in a certificate of tradition is the business that is made on the property so that the official could not register a business not carried out between private parties.[58]

Thus, Article 64 of Law 1579 of 2012 states that this legal phenomenon requires that the registrar, in order to declare the expiration, must issue a reasoned administrative act, which is not subject to any appeal and whose wording indicates:

The normative approach of Article 64 focuses on the lapse of registrations of precautionary measures and special contributions in the registry field. Within the framework of this provision, the registrations of precautionary measures have a duration of ten (10) years from their initial registration. However, it is possible to request the renewal of the registration before its expiration, which grants a new validity of five (5) years. This renewal may be extended for an equal period up to two additional times.[59]

Upon expiration of the established term or its extensions, the registrar will proceed to the cancellation of the registration by

means of a duly grounded administrative act of "cúmplase". It is important to note that no appeal is allowed against this decision. However, this cancellation process requires a written request from the holder of the corresponding real property right or from whoever demonstrates a legitimate interest in the property.[60] En virtud de lo anteriormente expuesto, se destaca el carácter esencial del término de diez (10) años, según lo dispuesto en este artículo, el cual comienza a transcurrir a partir de la entrada en vigor de esta ley, aplicándose a las medidas cautelares que ya se encontraban registradas antes de la promulgación de este estatuto.[61]

Derived from this principle, the transcendental conclusion of caducity arises, which materializes in the lapse of 10 years from the registration of the precautionary measure in question if, during this period, a different measure has not been taken on the property. However, it is pertinent to point out that this term may be interrupted when the relevant authority requests the extension of the measure. However, in any case, the precautionary measure will expire after an additional period of 5 years under the following conditions:[62]

A precautionary measure or special contribution that has been registered pursuant to Article 64 of Law 1579 of 2012 may have its validity extended through the renewal or extension granted by the judicial or administrative authority that ordered it. This process is carried out as follows:

- The first renewal may extend the term for an additional 5 years, reaching a period of up to 15 years.
- Subsequently, a first extension to the renewal is allowed, which is also extended for an additional 5 years.
- Finally, a second extension to the renewal is allowed, also with an extension of 5 years.

In accordance with the guidance of the Superintendency of Notaries and Registry, it is imperative that the order issued by a judicial or administrative authority to renew or extend for the first or second time be submitted to the registry before the expiration of the validity of the registration of the precautionary measure or the special contribution. This establishes a safeguard to preserve the validity of these legal provisions.[63]

This line emphasizes the need for registry officials to record the renewal of the measure in the certificate of tradition and to use specific codes for this purpose, as indicated in the instruction.[64]

It is crucial to highlight that the Constitutional Court, in Decision C-418 of 1994, has examined the issue in question. In this decision, it was stated that the setting of time limits for judicial actions does not limit access to the administration of justice but, in fact, facilitates and expedites it.[65] The absence of time limits for actions could result in paralysis of the judicial system.[66]

In order to fully comply with this legal mandate, it is imperative to address certain requirements that must be met in order for the removal of the annotation from the registry of public instruments to proceed. These requirements cover the following aspects:[67]

1. The annotation subject to cancellation must be at least 10 years old as of October 1, 2012, the date on which Article 64 of Law 1579 of 2012 came into force.
2. In situations related to the extinction of ownership, it is essential that the authority that imposed such a measure has not requested its renewal or extension prior to its expiration.
3. The person affected by this action, either the owner of the property or a third party acting in good faith and without fault, must be able to demonstrate a legitimate interest in the property in question.
4. Likewise, the registrar must issue and annotate an administrative act of cancellation that is not subject to additional remedies.

In the specific case of real estate in relation to the forfeiture of ownership, a fundamental aspect arises in the retention of the seized assets. This precautionary measure is implemented with the purpose of preventing the owner of the property, either directly or through third parties, from performing acts such as alienation or exchange that may affect its legal situation. According to the Registry Statute (Law 1579 of 2012),[68], the principle of publicity is satisfied through the disclosure of public instruments that modify or extinguish real rights over real property (Article 2, literal b).[69] This legislation seeks to provide visibility to such measures with the purpose that third parties, with knowledge or lack of diligence, do not fail to register withholdings, assuming the consequences that the process entails.[70,71]

In line with the interpretation, the assets subject to seizure remain under the custody of the authority that ordered this measure. At the same time, the process progresses until a specialized judge issues the corresponding sentence.[72] It should be noted that the seizure does not affect the ownership of the assets, which continue to be registered in the name of the party involved in the forfeiture of ownership case. Likewise, it is important to highlight that the action exercised does not grant any real right that allows the disposition of the assets for the benefit of the State unless in exceptional situations where the anticipated alienation is applied. In this same context, it is relevant to mention Law 1849 of 2017, which introduces amendments to Article 93 of Law 1708 of 2014. This legislation regulates the process of anticipated alienation and establishes specific criteria that determine when the State may make the disposition of the assets that are under the precautionary measure (Article 24).[73]

CONCLUSIONS

It is perfectly reasonable to infer in a reasoned manner that when the precautionary measures related to real property are regulated by the procedural regulations and the Statute of Registration of Public Instruments relevant in each situation, the legal implications and effects of the administrative or judicial resolutions acquire an analogous degree of importance and scope. Consequently, the denial of such measures becomes a futile effort for those individuals who are affected by them. In other words, because registrations are subject to the possibility of cancellation in all circumstances, including registrations of judicial proceedings, as in the present case, the validity of the registration of the precautionary measure in the real estate registry is nullified.

In this context, it is relevant to note, for example, that in the scenario of a seizure, once the cancellation is registered, the owner of the real property could exercise his right of disposition without restrictions. Similarly, when it comes to the registration of a claim, the decision taken in the context of the process that led to the imposition of the precautionary measure would lose its validity in relation to a possible new owner. This principle applies to each particular situation.

The fundamental understanding is that the precautionary measures, designed to ensure the outcome of a judgment, respond to a global reality present in the judicial system: the time required for the initiation, development, and conclusion of a legal process, which in Colombia can be excessively extended. This situation could cause irreparable damage or harm since the execution of a judge's decision could devalue the value of assets, affect the physical or mental well-being of individuals, and have repercussions on the balance of ecosystems or the well-being of animals. Precautionary measures are presented as a tool to mitigate these damages and guarantee the effectiveness of judicial decisions.

The system of expiration of precautionary measures has reached its first year of application. According to Article 64 of the Statute, the registrations of precautionary measures have an initial duration of ten years from their date of registration. However, there is the possibility of requesting the renewal of these measures by the judicial or administrative authorities that have ordered them. Thus, it is feasible to extend their validity for an additional five years, with the option of extending it in equal periods up to two times.

It is relevant to note that the holder of the real rights or whoever can demonstrate a legitimate interest in the property must file a request for cancellation once the initial period of validity or any of its extensions has expired. The cancellation will be effected through an administrative act issued by the corresponding registrar, and this act will not be subject to any appeal against it.

It is essential to consider that, in the case of precautionary measures registered before the entry into force of the Statute, the ten-year period begins to run from its issuance, i.e., as from October 1, 2012.

In this sense, the legal representatives have the opportunity to process the extension request before the corresponding instances. On the other hand, the interested owners must be vigilant so that once the indicated term has elapsed without the extension having been requested, the cancellation is carried out. This will allow them to free their property from the precautionary measures registered.

In the Colombian context, the precautionary measure resource emerges as an instrument of jurisdictional quality with a specific purpose: to guarantee the effectiveness of judicial decisions. This tool is sought, either ex officio or at the request of the parties, to ensure the preservation, prevention, or safeguarding of the relevant rights and interests in the course of the process.

In this regard, it is important to highlight the role played by public registry offices in relation to the expiration of precautionary measures, especially in light of Law 1579 of 2012. Despite the efficiency with which they operate, certain regulatory gaps are present in relation to real estate. In this context, the incorporation of the arbitration figure becomes essential to establish the relevant precautionary measures in relation to such assets.

Ten years have already elapsed since the implementation of the Public Instruments Registry Statute in force, which marks the beginning of the expiration regime of precautionary measures registered on real estate. Consequently, it is crucial to carry out the necessary actions between legal representatives and interested parties to seek the renewal of the relevant precautionary measures.

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CONFLICT OF INTEREST

The authors declare that there is no conflict of interest.

AUTHORSHIP CONTRIBUTION

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REFERENCES

1. Fernández LD, Parrado RP, Cisneros JDD. La gestión del componente laboral a través del acompañamiento a estudiantes en formación. Región Científica 2023;2:202383-202383. https://doi.org/10.58763/rc202383.

2. Haro AMZ, Mora ÁSR. Malnutrition prevention strategy based on neonatal screening through the metcoff clinical method. Salud, Ciencia y Tecnología 2023;3:555-555. https://doi.org/10.56294/saludcyt2023555.

3. Karthikeyan J, Vasanthan R, Dzuvichu K. A sociolinguistic discourse analysis of assimilated English words: a usagebased model of language acquisition. Salud, Ciencia y Tecnología - Serie de Conferencias 2023;2:600-600. https://doi.org/10.56294/sctconf2023600.

4. Lichtensztejn M, Benavides M, Galdona C, Canova-Barrios CJ. Knowledge of students of the Faculty of Health Sciences

about Music Therapy. Seminars in Medical Writing and Education 2023;2:35-35. https://doi.org/10.56294/mw202335.

5. Dionicio RJA, Serna YPO, Claudio BAM, Ruiz JAZ. Sales processes of the consultants of a company in the bakery industry. Southern Perspective / Perspectiva Austral 2023;1:2-2. https://doi.org/10.56294/pa20232.

6. Acosta S. Ineficiencia e implicaciones jurídicas de la inadmisión de la inscripción en las oficinas de Registro de Instrumentos Públicos, por error en la descripción, cabida o linderos de los inmuebles. [Artículo de investigación para Tesis en la Maestría en Derecho de la Universidad Pontificia Bolivariana, Colombia]. 2018 [citado 20 de febrero de 2024]. Disponible en: https://repository.upb.edu.co/handle/20.500.11912/4107

7. Moreno AMA, Paredes BAO, Guardias HPT, Palmera BV. Análisis estratégico para la empresa Imbocar, seccional Valledupar – Colombia. Región Científica 2023;2:202395-202395. https://doi.org/10.58763/rc202395.

8. Ganán K, Chasillacta F. La comunicación en el cuidado humanizado brindado por el profesional de enfermería. Salud, Ciencia y Tecnología 2023;3:505-505. https://doi.org/10.56294/saludcyt2023505.

9. Arias F. El proyecto de investigación Introducción a la metodología científica. Caracas: Episteme; 2012.

10. Sánchez RM. Transformando la educación online: el impacto de la gamificación en la formación del profesorado en un entorno universitario. Metaverse Basic and Applied Research 2023;2:47-47. https://doi.org/10.56294/mr202347.

11. Auza-Santiváñez JC, Díaz JAC, Cruz OAV, Robles-Nina SM, Escalante CS, Huanca BA. Bibliometric Analysis of the Worldwide Scholarly Output on Artificial Intelligence in Scopus. Gamification and Augmented Reality 2023;1:11-11. https://doi.org/10.56294/gr202311.

12. Horta GAH, García ZG. Resultados del tratamiento de rehabilitación física en niños con retardo en el desarrollo psicomotor. Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria 2023;3:28-28. https://doi.org/10.56294/ri202328.

13. Jeronimo CJC, Basilio AYP, Claudio BAM, Ruiz JAZ. Human talent management and the work performance of employees in a textile company in Comas. Southern Perspective / Perspectiva Austral 2023;1:5-5. https://doi.org/10.56294/pa20235.

14. Beltrán N. Caducidad de medidas cautelares sobre inmuebles. Diario La República. 2021.

15. Aveiro-Róbalo TR, Pérez-Del-Vallín V. Gamification for well-being: applications for health and fitness. Gamification and Augmented Reality 2023;1:16-16. https://doi.org/10.56294/gr202316.

16. Lobato KJT, Pita DLR, Ruiz GEZ, Claudio BAM. The impact of job performance and performance on workers in northern Lima. Health Leadership and Quality of Life 2023;2:30-30. https://doi.org/10.56294/hl202330.

17. Montano-Silva RM, Fernández-Breffe T, Abraham-Millán Y, Céspedes-Proenza I, Pantoja-García E. «Tooth fairy» educational strategy for infants in the fifth year of life. Community and Interculturality in Dialogue 2023;3:77-77. https://doi.org/10.56294/cid202377.

18. Ñañez-Silva M, Meneses-Claudio B. University academic tutoring in times of COVID-19. Proposal of strategies from the perspective of the tutor and tutored. Data and Metadata 2023;2:165-165. https://doi.org/10.56294/dm2023165.

19. Velasco ASD, Ccama FLM, Claudio BAM, Ruiz GEZ. Transformational Leadership as a Driver of Business Success: A Case Study in Caquetá. Health Leadership and Quality of Life 2023;2:37-37. https://doi.org/10.56294/hl202337.

20. Carestia DR, Beltran AF, Cerdera F, Sanchez ML, Ibáñez F. Impacto fisiológico de la respiración, en la salud y en el nivel del estrés. Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria 2023;3:46-46. https://doi.org/10.56294/ri202346.

21. Congreso de la República de Colombia. Ley 1579. 2012.

22. Pérez BNP, Miranda GLH, Horta GAH, Vitón-Castillo AA. Tendencias del proceso de gestión del trabajo metodológico en la carrera de medicina. Salud, Ciencia y Tecnología - Serie de Conferencias 2023;2:487-487. https://doi.org/10.56294/sctconf2023487.

23. Gonzalez-Argote D, Gonzalez-Argote J. Generation of graphs from scientific journal metadata with the OAI-PMH system. Seminars in Medical Writing and Education 2023;2:43-43. https://doi.org/10.56294/mw202343.

24. Corte Constitucional. Sentencia T-356. 2018.

25. Peña MG, Ocmin LSL, Romero-Carazas R. Control interno de inventario y la gestión de resultados de un emporio comercial de la región de San Martín - Perú. Región Científica 2023;2:202392-202392. https://doi.org/10.58763/rc202392.

26. Freire-Palacios V, Jaramillo-Galarza K, Quito-Calle J, Orozco-Cantos L. La inteligencia artificial en la gamificación para promover la salud mental de los estudiantes universitarios: una revisión de alcance. Salud, Ciencia y Tecnología 2023;3:639-639. https://doi.org/10.56294/saludcyt2023639.

27. Corte Constitucional. Sentencia C-269. 2021.

28. Ron M, Pérez A, Hernández-Runque E. Nivel de riesgo para la salud y predicción del dolor musculo-esqueletico en trabajadores en condiciones de teletrabajo: Un enfoque matricial. Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria 2023;3:40-40. https://doi.org/10.56294/ri202340.

29. Castillo-González W. The importance of human supervision in the use of ChatGPT as a support tool in scientific writing. Metaverse Basic and Applied Research 2023;2:29-29. https://doi.org/10.56294/mr202329.

30. Chinchilla G. Sistematización del servicio público registral en las oficinas de registro de instrumentos públicos en Colombia. [Tesis de grado, Universidad Nacional Abierta y a Distancia]. [citado 20 de febrero de 2024]. Disponible en: https://repository.unad.edu.co/handle/10596/13526.2017.

31. Barrios CJC, Hereñú MP, Francisco SM. Augmented reality for surgical skills training, update on the topic. Gamification and Augmented Reality 2023;1:8-8. https://doi.org/10.56294/gr20238.

32. Lepez CO. Invisible challenges in healthcare leadership. Health Leadership and Quality of Life 2023;2:35-35. https://doi.org/10.56294/hl202335.

33. Díaz J. Procedencia de las cancelaciones de oficio en el registro de instrumentos públicos. [Tesis de grado, Facultad de Derecho, Universidad Cooperativa de Colombia]. [citado 20 de febrero de 2024]. Disponible en: https://repository.ucc.edu.co/items/80a0d1b2-49ec-4bac-8715-f202effce1db.2017.

34. Suárez EJC. Cursos de calidad para una educación superior virtual de calidad. Salud, Ciencia y Tecnología - Serie de Conferencias 2023;2:575-575. https://doi.org/10.56294/sctconf2023575.

35. Bory E de JP, Naranjo OV, Herrero LB, Flores LGA, Fuentes MGB. Pertinence of the teaching use of virtual classroom by Basic Biomedical Science Department. Seminars in Medical Writing and Education 2023;2:31-31. https://doi.org/10.56294/mw202331.

36. Gallo S. Cancelación de medidas cautelares sobre inmuebles. PPU Legal. [citado 20 de febrero de 2024]. Disponible en: https://www.asuntoslegales.com.co/analisis/sebastian-gallo-3097615/cancelacion-demedidas-cautelares-sobre-inmuebles-3097604.2020.

37. Morgner MI, Djament L. Impact of Preventive and Mandatory Social Isolation in the control of type I diabetes in adults in the Buenos Aires Metropolitan Area. Community and Interculturality in Dialogue 2023;3:82-82. https://doi.org/10.56294/cid202382.

38. Gavilan NE, Paquiyauri YY, Meneses-Claudio B, Lopez-Curasma A, Romero-Sandoval J. Pedagogical Management and Managerial Leadership in the Secondary Educational Institutions of Network 6, UGEL 06, Ate, 2020. Data and Metadata 2023;2:172-172. https://doi.org/10.56294/dm2023172.

39. Hernández R, Fernández C, Baptista P. Metodología de la investigación, sexta edición. México: McGraw-Hill; 2014.

40. Castillo-Gonzalez W, Lepez CO, Bonardi MC. Augmented reality and environmental education: strategy for greater awareness. Gamification and Augmented Reality 2023;1:10-10. https://doi.org/10.56294/gr202310.

41. Leon E, Rodriguez C, Martínez MDC, Ron M. Hearing injuries due to atmospheric pressure changes in air and water survival training instructors. Health Leadership and Quality of Life 2023;2:39-39. https://doi.org/10.56294/hl202339.

42. Hernández Villarreal G. Medidas cautelares en los procesos arbitrales ¿Taxatividad o enunciación de las cautelas?: mandatory or optional. Estudios Socio-Jurídicos. 2007;9(1):183-204. Disponible en: http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0124-05792007000100007&lng=en&tlng=es.

43. Vallejo RG. Metaverso, sociedad y educación. Metaverse Basic and Applied Research 2023;2:49-49. https://doi.org/10.56294/mr202349.

44. Centon JMG, Cubas WC, Huillcacuri JB, Maldonado ABS. El crecimiento empresarial y su relación en la rentabilidad de una MYPE del rubro comercial en Arequipa, Perú. Región Científica 2023;2:202387-202387. https://doi.org/10.58763/rc202387.

45. Micolta T, Peñas O, Arroyave E. Caducidad de la medida cautelar de embargo, secuestro y suspensión del poder dispositivo de bienes inmuebles en los procesos de extinción de dominio en Colombia. [Tesis de grado, Facultad de Derecho, Universidad Cooperativa de Colombia]. [citado 20 de febrero de 2024]. Disponible en: https://repository.ucc.edu.co/items/624a7eef-02d1-4061-b65c-796f91b96e41.2022.

46. Salvador VKA, Barrera MJ, Olvera JLC, Chavez MTC, Riva MEM-L. Formación del docente de enfermería en el uso de Innovación educativa en la Atención Primaria Salud: Revisión literaria. Salud, Ciencia y Tecnología 2023;3:471-471. https://doi.org/10.56294/saludcyt2023471.

47. Asencios-Trujillo L, Asencios-Trujillo L, Rosa-Longobardi CL, Gallegos-Espinoza D, Piñas-Rivera L. Inteligencia emocional en estudiantes del último año de un programa de educación de una universidad privada en Lima. Salud, Ciencia y Tecnología - Serie de Conferencias 2023;2:406-406. https://doi.org/10.56294/sctconf2023406.

48. Moro Serrano A. Los orígenes de la publicidad inmobiliaria. Revista crítica de Derecho Inmobiliario. 1991;(603):537-ss. Citado en: Ternera Barrios F. Bienes, Segunda Edición, Editorial Universidad del Rosario. Bogotá; 2013. Pág. 402.

49. Rodríguez-Martínez C, Alvarez-Solano J, Pérez-Galavís AD, Ron M. Distance education during the COVID-19 pandemic: experience at a public university. Seminars in Medical Writing and Education 2023;2:32-32. https://doi.org/10.56294/mw202332.

50. David BGM, Ruiz ZRZ, Claudio BAM. Transportation management and distribution of goods in a transportation company in the department of Ancash. Southern Perspective / Perspectiva Austral 2023;1:4-4. https://doi.org/10.56294/pa20234.

51. Reyes C. Las medidas cautelares anticipatorias e innominadas en el proceso arbitral en Colombia. Vniversitas. 2016;(132):15-47.

52. Vanoy RJA. Transformación Educativa: Optimización en la Enseñanza de Logística en los Negocios Internacionales mediante la Aplicación de Inteligencia Artificial en Instituciones de Educación Superior. Salud, Ciencia y Tecnología - Serie de Conferencias 2023;2:422-422. https://doi.org/10.56294/sctconf2023422.

53. Bory E de JP, Naranjo OV, Herrero LB, Flores LGA, Fuentes MGB. Enseñanza híbrida: una innovación docente departamental partícipe de la transformación digital universitaria. Seminars in Medical Writing and Education 2023;2:28-28. https://doi.org/10.56294/mw202328.

54. Superintendencia de Notariado y Registro. Instrucción Administrativa No. 08. Septiembre 30 de 2022.

55. Torres MER, Espriella PGDL. Creación de un modelo tecno-pedagógico para el fortalecimiento de la lengua Emberá Katío mediante las costumbres ancestrales en la institución educativa el Rosario de Tierralta. Región Científica 2023;2:202398-202398. https://doi.org/10.58763/rc202398.

56. Estrella NLC, Pérez GPL. Atención de enfermería en pacientes oncológicos con cuidados paliativos. Salud, Ciencia y Tecnología 2023;3:488-488. https://doi.org/10.56294/saludcyt2023488.

57. Torrealba Rodríguez C. La Recopilación documental como técnica de investigación. [citado 20 de febrero de 2024]. Disponible en: http://dani14238551.blogspot.com/2009/03/la-recopilacion-documental-como-tecnica.html.2009.

58. Torres A, Pérez-Galavís A, Ron M, Mendoza N. Factores Psicosociales Laborales y Estrés en el Personal Médico Asistencial. Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria 2023;3:42-42. https://doi.org/10.56294/ri202342.

59. Cano CAG, Castillo VS, Rojas EEM. Strategy for improving learning in the Financial Tools and Project Management Course through the use of Second Life-SL. Metaverse Basic and Applied Research 2023;2:31-31. https://doi.org/10.56294/mr202331.

60. Ternera Barrios F. Bienes, Segunda Edición, Editorial Universidad del Rosario. Bogotá; 2013. Pág. 402.

61. Romero-Carazas R. Prompt lawyer: a challenge in the face of the integration of artificial intelligence and law. Gamification

and Augmented Reality 2023;1:7-7. https://doi.org/10.56294/gr20237.

62. Cantaro JCC, Tello JDLCH, Ruiz GEZ, Claudio BAM. Leadership styles and organizational climate among employees in Lima, Peru. Health Leadership and Quality of Life 2023;2:36-36. https://doi.org/10.56294/hl202336.

63. Trujillo F. Las medidas cautelares en el contexto del Código General del Proceso colombiano. Revista Criterio Jurídico Garantista. 2014;6(11):176-185. ISSN: 2145-3381.

64. Pérez-Hernández G, Téllez NR, C JJR, S LGL, L OG. Use of videos as a method of learning in social service projects. Community and Interculturality in Dialogue 2023;3:100-100. https://doi.org/10.56294/cid2023100.

65. Ezzaim A, Dahbi A, Haidine A, Aqqal A. Enhancing Academic Outcomes through an Adaptive Learning Framework Utilizing a Novel Machine Learning-Based Performance Prediction Method. Data and Metadata 2023;2:164-164. https://doi.org/10.56294/dm2023164.

66. Llana AJO, Ruiz JAZ, Claudio BAM. Quality of service and citizen satisfaction in a Lima district municipality. Southern Perspective / Perspectiva Austral 2023;1:17-17. https://doi.org/10.56294/pa202317.

67. Cánovas LPL, Cánovas LBL, Rodríguez YP, Hernández BG, Martín MMP, Montano AL. Evaluation of Burnout Syndrome and associated factors in primary care health personnel. Community and Interculturality in Dialogue 2023;3:73-73. https://doi.org/10.56294/cid202373.

68. Yauri-Paquiyauri Y, Enriquez-Gavilan N, Meneses-Claudio B, Lopez-Curasma A, Romero-Sandoval J. Aggressiveness and school coexistence in students of the 6th grade of the educational institution Nº 20595 «José Gabriel Condorcanqui», San Mateo 2021. Data and Metadata 2023;2:169-169. https://doi.org/10.56294/dm2023169.

69. Parra AL, Escalona E, Gollo O. Estudio piloto comparativo de medidas antropométricas en bipedestación entre Tablas antropométricas y un Antropómetro Harpenden. Interdisciplinary Rehabilitation / Rehabilitacion Interdisciplinaria 2023;3:48-48. https://doi.org/10.56294/ri202348.

70. López-Belmonte J, Pozo-Sánchez S, Moreno-Guerrero A-J, Marín-Marín J-A. We've reached the GOAL. Teaching Methodology for Transforming Learning in the METAVERSE. A teaching innovation project. Metaverse Basic and Applied Research 2023;2:30-30. https://doi.org/10.56294/mr202330.

71. Viera EJH, Meléndez NMN, Claudio MCM, Ruiz JAZ. Selection process in the Operations area of a company in the ecological sector. Southern Perspective / Perspectiva Austral 2023;1:13-13. https://doi.org/10.56294/pa202313.

72. Florentin GNB. The human dimension in nursing. An approach according to Watson's Theory. Community and Interculturality in Dialogue 2023;3:68-68. https://doi.org/10.56294/cid202368.

73. Rasheed Z, Ghwanmeh S, Abualkishik AZ. Harnessing Artificial Intelligence for Personalized Learning: A Systematic Review. Data and Metadata 2023;2:146-146. https://doi.org/10.56294/dm2023146.