
CHILDREN BEING AFFECTED FOR THE ILLEGAL USE OF GUNPOWDER AND FIREWORKS IN COLOMBIA: LEGAL PROBLEMS

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The are analyzed existing national legal means of Colombia for preventing victims among children by the illegal are of fireworks though the existing international legal guarantees for protection of rights of children.

Key words: gunpowder, fireworks, burnt out children, irresponsible parents, legal framework, rights of children.

Colombia, known worldwide as a land of festivals and celebrations, has used gunpowder, which is originated in the ancient China, at any time of the year and especially in the month of December.

Year after year we find in Colombian newspapers, and in general, the media, headlines such as «the number of children burned with gunpowder has increased», a situation that becomes depressing and repetitive for the Colombian population.

The burning of gunpowder included in December holidays in the Colombian territory, is certainly a tradition that has many years of being practiced and that today, is a normalized act both the competent authorities and by society in general.

What never would be normalized, is that these activities that should be exclusively for adults — not the enjoyment, but its practice — skilled or qualified persons or personal trained to handle fireworks, includes children on its structure, who, like adults, come to handle gunpowder with their hands, and turn out being victims of this, as in many cases even burn their faces, lose their hands, any member of their bodies, or even can cause them to death.

As caregivers adults of the children's welfare, shall be avoided to exposure them to risky situations, while all adults are required to contribute effectively to the prevention of the risk caused by pyrotechnics and fireworks that can affect the life, physical integrity, health and the happy childhood of the child (Art. 2) [7].

Article 44 of the Political Constitution of Colombia, states that «are basic rights of children: life, physical integrity, health and social security, a balanced diet, their name and citizenship, to have a family and not be separated from it, care and love, instruction and culture, recreation, and the free expression of their opinions. They will be protected against all forms of abandonment, physical or moral violence, impris-

onment, sale, sexual abuse, work or economic exploitation, and dangerous work. They will also enjoy other rights upheld in the Constitution, the laws, and international treaties ratified by Colombia. The family, society, and the state have the obligation to assist and protect children in order to guarantee their harmonious and complete development and the full exercise of their rights. Any person may request the competent authority to enforce these rights and to sanction those who violate them. The rights of children have priority over the rights of others» (Art. 44) [9].

Thus we see how the national legislation shelter the child from any harm that may be exercised at him/her, life, physical integrity, health and social security should be cared throughout the family, society and the State, being protected by the rights held by the Constitution, laws and international treaties enshrined in Colombia.

Among these international treaties, we have the Convention on the Rights of the Child (CRC) [2], a United Nations core treaty entered into force on September 2 of 1990 in accordance with Article 49, and in Colombia, signed on January 6 of 1990, ratified on January 28th of 1991 and entered into force on February 27th of 1991. This Convention consecrates the rights of minors in 54 articles, recognizing children as holders of rights to be protected by society and the State, being the most widely ratified treaty body by States Parties of the United Nations, except the United States and Somalia [10].

Among the provisions that states must carry out as part of the CRC is that «States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures» (Art. 3 par. 2 CRC). It also will ensure that «States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision» (Art. 3 par. 3 CRC).

To achieve the effective implementation of the articles of the CRC: «States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation» (Art. 4 CRC). This means that Colombia as a state party of the Convention on the Rights of the Child must ensure the protection of minors having into consideration the adults that are responsible for them before the law. The rules instituted by the authorities must be accomplished, especially with regard to the safety of children. Colombia has the obligation to amend their national laws and require international cooperation where necessary.

Meanwhile, in national legislation, the use, sale and gunpowder forbiddance to minors have its legal rank established by Law 670 of 2001 [7], which partially works out Article 44 of the Political Constitution, where the child's life is protected and sets

the protective provisions to the child for handling items or fireworks (Art. 1 par. 2 Law 670).

Municipal and district authorities may allow the use of fireworks as long as they had established security conditions to prevent fire or situations that endanger the life of people, in this way, pyrotechnic articles or fireworks are divided into 3 categories: 1) Those that pose minimal risk and can be used in residential areas; 2) Those showing moderate risks and can be used in confined areas; 3) Those that are at high risk and only can be used and/or manipulated by experts in public entertainment spaces and its manufacturing or distribution must be authorized by the Ministry of National Defense (Art. 5 Law 670).

The provisions of the manufacture or production of pyrotechnics or fireworks must be taken by the Ministry of National Defense and eradication, production, manufacturing or consumption and use of fireworks or illegal fireworks should be attempted, by means of specific campaigns of the National Police and firefighters corps for this commitment, in Colombia are being conducted campaigns to prevent the use of gunpowder in minors, and for this, the cities and municipalities implement prevention campaigns and achieve the purpose of zero burned and intoxicated, as that achieved in Barranquilla last December 7 of 2012 (a traditional day in Colombia where is celebrated the Immaculate Conception of the Virgin Mary and in which families and friends gather to light candles at the doors and terraces of their houses, marking the entry of December holidays in the country.) But not all is happiness, because in other cities were registrated burned people and many of them were minors.

A very clear and regulated progress in this matter, is the partial and total forbiddance on the sale of fireworks and balloons to minors or persons in drunkenness state in the whole national territory (Art. 7 Law 670) and although many young people and adults ignores the authorities, each time is attempted to advance more the eradication of gunpowder in Colombia allowing these irresponsible people to pay for violating the rights of children. «Adults who allow or induce children to handle or use fireworks or balloons, will get the products confiscated and will suffer a civil penalty consisting on the execution of tasks for the prevention and emergency care that benefit the community» (Art. 10 Law 670).

In 2011, 1.101 people were burned out with gunpowder and 557 of them were children, of which, 21 children were taken out temporarily to another family atmosphere and one of them was taken out to a foster home, and such Colombia's Family Welfare Institute (Instituto Colombiano de Bienestar Familiar — ICBF) [5] regulates, parents of children burned by gunpowder may even lose the custody of their children. At the end of 2011, 44 parents of children burned with gunpowder were punished and subjected to perform social work and attend to educational workshops [5].

Although the authorities and pertinent bodies are responsible for developing legal files that determines and forces to an appropriate adult behavior before the care of children, youth and adults get for any means the gunpowder, that for unjustified mistake of them, this end up on the hands of little children, those through time turn out

being the most affected according to the figures thrown by different media and official entities in charge, such as the ICBF and the National Institute of Health.

Mass media have a great job with the Colombian population; it «shall promote, through the dissemination of information, the rights and freedoms of children, girls and adolescents, as well as their social, physical and mental health» (Art. 47) [6].

In the Universal Periodic Review of 2009 [8], Colombia, as voluntary commitment (#101), compromised to fully implement the provisions of the new code in all areas and in its advances:

- for the spreading of the new Code of Infancy and Adolescence the Colombia's Family Welfare Institute ICBF has undertaken a strategy that includes all national media (Caracol TV, RCN Radio, Police Radio, Institutional Channel, website) where messages are broadcast daily to publicize the rights of children;

- in order to strengthen the implementation of the new Code, there have been trained 1170 public servants from the issuance of this, through graduates and workshops, seminars, and even specializations.

Betweenwhiles, the National Police is an entity that belongs to the National Family Welfare System. Its mission as a member of the System is to guarantee full protection of children and adolescents in the context of the competencies and duties assigned to it by law. One of its specialized forces is the Police for Children and Adolescents (which replaces the Police for Minors) and it organizes different specialized units. The Police for Children and Adolescents is especially relevant to the compliance with the Protocol to the CRC [1].

The Police for Children and Adolescents has the following duties:

- to comply with and enforce compliance with all norms and decisions issued by State agencies for the protection of children and adolescents;

- to exercise surveillance in order to control the carrying of firearms or sharp weapons, intoxicating beverages, gunpowder, narcotics and pornographic materials, by children or adolescents, as well as articles that might endanger their integrity, and to proceed to confiscate such articles;

- to design prevention programmes for adults in connection with the carrying and the responsible use of firearms, of intoxicating beverages, of gunpowder, of war toys and cigarettes, when those adults live with or are accompanied by children or adolescents.

A curious data is that the reports that must be handed over by Colombia as part of the Convention on the Rights of the Child, referring to the burnt out children topic, it's almost non-existent.

Thanks to the campaigns realized to prevent the use of gunpowder, it has got an awareness in adults and children of the risk of being exposed to it, and has also acquired to decrease their use and control by themselves, but statistics of affected persons persist year after year and there is still much work to do.

Health care centers also plays an important role, because for any reason may not restrict the entry of children burned with gunpowder to its buildings, «a minor who results with burns and corporal injuries for the use of pyrotechnics, health care centers

and public and private hospitals are obliged to give them immediately medical- hospitable treatment no matter the urgency required, without being able to argue reason to deny it, not even in the absence of their legal representatives, the lack of availability of money or lack of space» (Art. 14 Law 670).

As I mentioned at the beginning of my speech, Colombia as a state party of the Convention on the Rights of the Child, is required to implement each of the 54 articles that it has, and as we see, that is not being met, inasmuch as Colombia must ensure in the maximum extent possible the survival and development of children (Art. 6 par. 2 CRC).

With so many children burned each year because of the gunpowder, it is clear that both the state and society are failing, because meanwhile the state is not getting the results expected being part of the Convention, and the irresponsible adults, they insist in neglecting children and exposing them to risky situations.

Another year have passed and with it, many burned people in this 2012: from December 1 to January 1 of 2013, there were 704 cases of people being burned out with gunpowder, of which, 339 were minors [3].

Despite to the State's call, the competent institutions and authorities (the latter in many cases are partakers of this problem and allow the clandestine sale of gunpowder), nowadays people continues braking the established law, and it continues ignoring the statistics and it is still playing with the lives of children in Colombia.

Law shall be implemented, there must be a squaring of accounts and get tough to offenders who fail to comply, but to do so, we need to keep working and apply much harsher penalties to these people. To start at home working with children, teaching them that gunpowder is not a game, that when a friend offers them to play with it they should know how to say no and to explain why to prevent harm, both to him/her, and also for who is offering it. To teach them that life is first and that they are entitled to be protected by each person around them and for the Colombian law.

There should not be burned out children in Colombia or anywhere in the world.

LITERATURE

- [1] Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Initial reports of States parties due in 2005. Colombia. <http://www.ohchr.org>.
- [2] Convención sobre los Derechos del Niño 1989. URL: <http://www2.ohchr.org/spanish/law/crc.htm>.
- [3] De 704 quemados con pólvora en diciembre de 2012, 339 fueron niños. URL: <http://colmundoradio.com.co/index.php/nacion/8578-de-704-casos-de-afectados-con-polvora-339-son-ninos-informa-instituto-nacional-de-salud>.
- [4] Decreto 4481 de 2006 URL: <http://www.alcaldiabogota.gov.co/sisjur/normas/Normal.jsp?i=22439>.
- [5] Instituto Colombiano de Bienestar Familiar (ICBF) 2011. URL: <http://www.icbf.gov.co>.
- [6] Ley 1098 de 2006. URL: http://www.elabedul.net/Documentos/Leyes/2006/Ley_1098.pdf.

- [7] Ley 670 de 2001. URL: http://www.secretariasenado.gov.co/senado/basedoc/ley/2001/ley_0670_2001.html.
- [8] Periódico Universal de Colombia — EPU. Seguimiento a recomendaciones y compromisos voluntarios. Primer Informe de avances. Junio 10 de 2009. URL: http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/CO/Colombia_UPR_June09.pdf.
- [9] Political Constitution of Colombia 1991. URL: http://confinder.richmond.edu/admin/docs/colombia_const2.pdf.
- [10] Status Convention on the Rights of the Child. URL: http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en.

**ПРАВОВЫЕ ГАРАНТИИ
ПО ЗАЩИТЕ ПРАВ ДЕТЕЙ В КОЛУМБИИ,
ПОСТРАДАВШИХ ИЗ-ЗА НЕЗАКОННОГО
ИСПОЛЬЗОВАНИЯ ПОРОХА И ФЕЙЕРВЕРКОВ**

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В статье рассматриваются существующие национальные правовые средства по предотвращению жертв среди детей в результате незаконного использования фейерверков в Колумбии в свете существующих международно-правовых гарантий по защите прав детей.

Ключевые слова: порох, фейерверк, безответственные родители, правовые рамки, права детей, международно-правовая защита.