

CERTIFIED TRANSLATION

**THE REPUBLIC OF COLOMBIA
SUPERIOR COURT OF THE JUDICIAL DISTRICT OF BOGOTA
CRIMINAL COURTROOM**

Superior Justice	LUIS FERNANDO RAMIREZ CONTRERAS
Document	11001220400020080134400
Petitioner	Hendrick Van Bilderbeek Soto
Respondent	1st Criminal Court of the Specialized Circuit
Rights	Due Process
Decision	Denied
Approved	Record No. 078
Date	July 9, 2008

1.- REASON FOR THE DECISION:

Issue a resolution regarding the public action filed by Hendrick Van Bilderbeek Soto against the 1st Criminal Court of the Specialized Circuit due to the alleged violation of the fundamental right to Due Process.

2.- GROUNDS FOR THE PETITION

Hendrick Van Bilderbeek Soto identified by citizen's identification card No. 79.942.302 issued in Bogota, files the action upon considering that the acts of the respondent ignore his fundamental constitutional rights. He states that there is a criminal proceeding against him for the crime of money laundering, which is at the stage of sentencing with the 1st Criminal Court of the Specialized Circuit of the city, pending the hearing for final arguments.

He states that his technical defense requested the decree and provision of evidence that arose after some responses were received to the letters rogatory sent to the United States of America and Austria, which had been ordered in the preliminary hearing; that he requested clarification, supplemental information and the addition of expert reports entered in the record. These requests were denied with the ruling of June 3, 2008, and because they had been substantiated, he was not allowed to use his legal resources, which blatantly violated his right to due process and defense.



3.- ACTS

3.1.- Having received the case, the provision of evidence was ordered as well as the notification to the respondent with the purpose of guaranteeing the right to defense; moreover the petitioner was advised of the commencement hereof.

3.2.- The 1st Criminal Court of the Specialized Circuit of the City submitted a communication including a copy of the rulings of October 12, 2007, May 12, 2008, and June 3, 2008, by means of which it issued rulings on the merits of the petitions for new evidence, as well as the request for additional evidence, clarification or supplemental information regarding the expert reports entered in the record.

He states that there has been no violation of the fundamental rights claimed as such by the petitioner, since the Court followed the procedures established by the standards of Criminal Procedures, and that the denial of the evidence was exclusively based on such petition having been filed extemporaneously, since it was not requested throughout the course of the preliminary hearing, and they cannot be included as new evidence as they are totally unjustifiable, and the only thing that is evident is a petition having the purpose of delaying the proceedings.

4.- CONSIDERATIONS

The protection of rights is an instrument entrusted to Judges by the Political Constitution, and it exists to offer to a petitioner the possibility of resorting to the direct and immediate protection of his/her fundamental rights without greater formalities, should such rights have been violated due to the actions or omissions of a public authority or individual, as an exception, so that each one of the essential purposes of the State are complied with, in order words, to guarantee that the principles, rights and duties established by the Constitution are enforced.

Hendrick Van Bilderbeek Soto files a public action because he considers that the acts of the 1st Criminal Court of the Specialized Circuit of the city, upon denying the request of evidence, which in his opinion is new, and upon denying the clarification, supplemental information or addition of expert reports filed in the proceedings, violated his fundamental rights to due process and defense.



According to constitutional case law, the possibility of disputing judicial decisions through the action for protection of rights is of exceptional nature and limited, and is only applicable to cases in which it can be established that the acts of the Court are contrary to the law or the applicable judicial precedent and violate the fundamental rights, especially, the rights to due process and access to the administration of justice.

According to case law, the petition for protection of rights against judicial decisions is clearly based on the implementation by the constituent body of a new system of justice based, specifically on: a) the normative and supreme nature of the Political Constitution which binds all public authorities; b) the acknowledgement of the enforcement and priority of the fundamental rights; c) the existence of a Constitutional Court in charge of interpreting the Constitution and protecting the fundamental rights, and d) the acknowledged ability every person has of filing an action for protection of rights against any authority to defend his/her fundamental rights.¹

The exceptional and limited nature is justified by the constitutional principles that stipulate the respect for *res judicata*, the need to preserve juridical safety, the guaranty of independence and the autonomy of the judges and general subjection of conflicts to their regular competency².

"... has been building a nurtured doctrine related to the events and conditions under which the protection of rights is admissible against judicial rulings. In an attempt of systematization on the matter, in ruling C-590 of 2005 (Presenting Superior Judge Jaime Córdoba Triviño), the Court distinguished between general and causal requirements specifically related to the admissibility of the protection of rights from judicial rulings, specifying that the former are the cases which compliance is a condition for the judge to be able to examine whether the specific case shows a specific cause for admissibility of the action for protection of rights against judicial rulings.

¹ Ver Sent. T591/07

² Ver Sent. 233/07



In such ruling, this Court referred to the general requirements of admissibility of the legal protection of rights against judicial rulings as follows:

"24. The general requirements of admissibility of the action for protection of rights against judicial decisions are as follows:

a. That the matter under discussion has evident constitutional relevance. ...

b. That all mechanisms - ordinary and extraordinary - of judicial defense within the affected persons reach have been exhausted, unless the intention is to prevent a fundamentally irreparable damage.³ Therefore it is the actor's duty to use all ordinary judicial mechanisms granted by the legal system in defending his/her rights. Otherwise, that is, if the action for protection of rights is used as an alternative protection mechanism, there would be a risk of exhausting the competencies of the different judicial authorities, of concentrating all decisions inherent to them in the constitutional jurisdiction and bringing about an institutional overflow in compliance with the functions of the latter.

c. Compliance with the requirement of immediacy

d. In case of a procedural irregularity, it must be clear that it has a decisive or determining effect on the ruling challenged and that it affects the fundamental rights of the acting party⁴.

e. That the acting party reasonably identify the facts that generated the violation as well as the rights violated and that the acting party has alleged such violation in the judicial proceedings provided it was possible to do so.⁵ This requirement is understandable since, the action for protection of rights not being surrounded by formal requirements that are contrary to its nature and that have not established by the constituent body, it is in fact the duty of the actor to be clear about the grounds for the violation of rights he/she is attributing to the judicial ruling, that he/she has expressed them

³ TT-504 of 2000 Presenting Superior Justice José Gregorio Hernández Galindo

⁴ T-008 of 1998 and SU of 2000

⁵ T-658 of 1998 Presenting Superior Justice Carlos Gaviria Díaz



during the proceedings and that he/she reports everything at the time of seeking the constitutional protection of his/her rights.

f. That it does not regard protection of rights rulings⁶. ...

Regarding the special requirements of admissibility, the Court, in the referred ruling, stated.

"... for the protection of rights to be admissible against a ruling it is necessary to have at least one of the flaws or defects explained below.

- a. Organic defect ...
- b. Absolute procedural defect...
- c. Factual defect...
- d. Material or substantive defect...
- e. Induced error...
- f. Decision without motivation...
- g. Unknown precedent...⁷
- h. Direct violation of the Constitution

These cases in which the action for protection of rights is admissible against judicial rulings involve going beyond the concept of fact and admitting specific assumptions of admissibility in cases in which, although not showing a crude violation of the Constitution, there are illegitimate decisions that affect the fundamental rights"., ⁸ (highlighted)

Thus, it is clear that this event does not meet the requirements established by the case law of our superior constitutional body in order for admissibility of the action for protection of rights against judicial rulings.

The decision dated June 3, 2008, by means of which (sic.) the 1st Criminal Court of the Specialized Circuit is not a ruling. It is an order through which it denied the defense's request for new evidence, as well as the additional or supplemental information of the experts report already entered in the record; it was issued through a

⁶ T-088 of 1999 and SU 1219 of 2001

⁷ T-462 of 2003; SU 1184 of 2001; T-1625 of 2000 and T-1031 of 2001

⁸ Sent. T.591/07



resolution of substantiation despite resolving situations on the merits of the case, which necessarily implies that its nature was none other than an interlocutory ruling, such that legal recourses against it would be admissible, in other words, a request for review and appeal for reversal.

This intermediate decision of the proceedings, which could possibly lead one to think that there has been a blatant violation of due process and the right to defense of the defendant, upon not having allowed the procedural subjects of the criminal proceedings to file the legal recourses with respect to the ruling at hand, could represent a Court's act that is contrary to the criminal standards in force, both in terms of Law 600 of 2000 and as (sic.) petitioner and its representative have within the proceedings an efficient tool to safeguard their rights and claims, that is, article 195 of the Code of Criminal Procedures, which provides for filing of a complaint to the Court, which the technical and material defense could have and can perfectly resort to in order for the hierarchical superior level to study the admissibility or inadmissibility of the recourse of appeal against the ruling that denied the order to produce evidence referred to above.

It is also evident that the judge *quo*, acting with the serenity and objectivity with which all judicial activity is presided, can introduce the procedural remedies he/she deems necessary, since we cannot doubt the interest that all judges of the Republic have in adequately counting with the full set of evidence that will allow the Court to issue an informed, legal, fair and solid decision that does not have any internal flaws that would put the future of such decision in question.

Thus, it is clear that the action for protection of rights that is exceptionally admissible against judicial decisions, implies that these are definitive decisions that show one of the essential defects listed and that the petitioner has other judicial mechanisms to protect the rights invoked, which render this public action for protection of rights inadmissible, by virtue of the stipulations of Article 6, Decree 2591 of 1991.



This determination shall be notified in agreement with the provisions of Decree 2591/91 and regulations 306/92, that is, personal notification to the petitioner and respondent, and if this is not possible, notification through official letter.

By virtue of the above the SUPERIOR COURT OF BOGOTA D.C. in the Criminal Decisions Court, with the purpose of administering justice on behalf of the Republic and by the authority vested upon it by the Constitution and the Law,

HEREBY RESOLVES:

ONE.- TO DENY the action for protection of rights filed by Hendrick Van Bilderbeek Soto in agreement with the analysis above.

TWO.- Should this determination not be contested within three days following notification, it shall be forwarded to the Constitutional Court for future reference.

TO BE COPIED, NOTIFIED AND COMPLIED WITH.

LUIS FERNANDO RAMIREZ CONTRERAS
SUPERIOR JUSTICE

FERNANDO ELIECER MALDONADO CALA
SUPERIOR JUSTICE

NANCY YANIRA MUÑOZ MARTINEZ
SUPERIOR JUSTICE

