Mr.
Penal judge of the Specialized Circuit in Bogotá D. C.
Allotment.

Ref: Control of legality of the insurance measure.
Office 3ª Delegate before the Penal Judges of the Specialized Circuit in Bogotá. National unit against the Laundry of Active.
Resided: 2.178
Crime: Laundry of Active.
Syndicated: JORGE VICENTE LOZANO REYES, HENDRIK VAN BILDERBEEK and others.

ENRIQUE ANTONIO ALFORD CÓRDOBA AND NORMAN HUMBERTO LOZANO identified SANABRIA as he/she appears to the foot of our signatures, acting in defenders' of trust of HENDRIK quality VAN BILDERBEEK AND JORGE VICENTE LOZANO REYES inside the investigation of the reference, politely we present application of control of legality of the measure of consistent insurance in preventive detention without right to the excarcelación, imposed by the Office 3ª Delegate before the Penal Judges of the Specialized Circuit in Bogotá, attributed to the National Unit against the Laundry of Active, with base in the following arguments fácticos and juridical:

I. - DE THE CONTROL OF LEGALITY OF THE MEASURE DE ASERGURAMIENTO.

1.- This protection mechanism of the fundamental right to the personal freedom has been instituted with the objective of controlling the insurance measures and the decisions that affect the property, possession, holding or custody of goods furniture or properties uttered by the General District attorney of the Nation or its Delegate, in such way that the same one is guided to guarantee that the restrictive measures of the personal freedom are taken preserving the strict demands that for the effect the Political Letter and the law requires, so punishes that its affectation is revoked.

2.- The first thing that it is necessary to score is that the present control heads to the protection from the right to the processed JORGE'S personal freedom VICENTE LOZANO REYES AND HENDRIK VAN BILDERBEEK. In second term, we should leave sat down from since the defense of people before mentioned they have not interposed appeal resource against the date resolution October of 2004, 18 by means of which was solved artificial situation, then this he/she is ejecutoriada in connection with our protected ones.

3.- A third aspect to keep in mind consists in that the control of legality that is requested is of material nature, which was enthroned by the law 600 of July 24 2000 and interpreted jurisprudencialmente for the Constitutional Court in sentence of constitutionality C-805 of October of 2002, 1 with report of the Honorable Magistrates MANUEL JOSÉ CEPEDA ESPINOZA and EDUARDO MONTEALEGRE LYNETT in the following way:

"14.- In connection with the first aspect, relative to the environment of the control of the insurance measures, the legislator extended the control of legality from these measures to certain material aspects related with the minimum test to assure, supplementing the purely formal control that had arisen of the application of the article 414A of the Ordinance 2700 of 1991."

So that of the study of legality that is impetrated it is directed to the material revision of the legality of the measure.

II. - DE THE LEGALITY TO THE IMPOSED MEASURE OF INSURANCE.

1.- The definition of the artificial situation for the cases that it is required this way, imposes to the juridical operator to go into in the analysis of two aspects:
1.1.- The verification of if with her the ends are completed that has the insurance measure and that they are specifically established in the article 355 done in agreement with the article 3, both of the Code of Penal Procedure-Law 600 of 24 of Julio 200 -, it is worth to say to guarantee the appearance of the one syndicated to the process, the execution of the exclusive pain of the freedom or to impede their flight or the continuation of their criminal activity, to preserve the test means (to avoid the works that are undertaken to hide, to destroy or to deform important probatory elements for the instruction or to hinder the probatory activity) and to protect to the community.

In this point, the Fiscal instructor in the resolution by means of which solved the artificial situation points out that you/he/she is imposed to analyze the ends of the insurance measure, you/he/she stops later on, to indicate that we are in front of a criminal organization and not in front of an individual crime. He/she adds that the pain to impose for the crime of laundry of assets is high being necessary the detention, because it is obvious that they will escape those processed.

Also, it points out that given the professional and social conditions of those processed and their bonds with people to the margin of the law believe risk for the investigation.

In this first point the decision is openly illegal, all time that in penal right a principle called necessity of the test exists, consecrated in the article 232 of the Code of Penal Procedure, and that it orders that all decision should be founded in legal, regular tests and appropriately close to the investigation. Of

another part, in penal right it operates the principle of presumption of innocence that he/she results in that of the load of the test. In the penal process the accusing part, that is to say the General Office of the Nation is who it should prove the suppositions in fact of the norm whose juridical consequences want that they are applied.

Notice you like when being pronounced on the ends of the insurance measure the Fiscal instructor he/she makes it in a general and abstract way, without entering to analyze the situation of each one of the citizens linked to this investigation, besides not indicating which it is the means of test that it demonstrates each one from the conclusions to those that it arrives on each one of the ends of the insurance measure. He/she teaches the theory of the argument that you/they should be demonstrated to reach a conclusion the premises that you/they sustain the conclusion. Does he/she wonder the defense: which are they the test means that they demonstrate that our clients will escape that will obstruct the probatory activity or that they constitute a danger for the community? None, because the fiscal instructor goes to a fallacy argumentative denominated principle petition.

The principle petition (petitio principii) it defines it in the following way for MANS PUIGARNAU:

“The sofisma of the principle petition consists on taking, in a knowingly underhanded way as foundation or principle of the demonstration, a lacking proposition of evidence, that which can happen in three ways, that is: 1, taking like principle of the demonstration the same thesis that is to demonstrate, although modifying the material terms; 2, taking as evident for if same (per it is noticed) a proposition that is not really it; 3, taking like principle of the demonstration a proposition like the one that is to demonstrate.”

In turn ADOLFO LION GÓMEZ GIRALDO when referring to the principle petition indicates:

“The principle petition consists on postulating as admitted premise the conclusion that we want that our auditory admits by means of the argument. It is an argument flaw, not of logic, because it is the application of an argument ad hominen when it is not usable, since it supposes that the speaker has stuck to a thesis that we in fact want that it admits” (italic and the author's boldface).

The Fiscal instructor reaches the conclusion that our clients will escape given the pain so high that the law consecrates for the laundry of active. As we point out it in the previous allegation to the artificial situation, the graveness of the pain is not an approach to keep in mind to the moment to analyze the ends of the insurance measure, and it is as well as we mention the sentences corresponding of the European Tribunal of Human rights on this point. Then it is impertinent this appreciation of the Office. On the obviedad of the flight

possibility, this premise doesn't have any probatory sustenance. How does the Office reach this conclusion? We don't know, because he/she wants us to accept their conclusion without premises that demonstrate it exist. What does he/she make him think to the Office that our clients will give to the flight? Do tests that have among their plans to escape exist? The answer is negative. He/she wants that the conclusion is admitted without having demonstrated the premises, being the premises the same conclusion.

Worse still the related with the hindering of the probatory activity. He/she says the Office that given the professional and social situation of our clients, besides its bonds with people to the margin of the law believes risk for the tests. He/she doesn't explain in which of the three possible hypotheses our clients are, that is to say if they will destroy, to deform or to hide test means. He/she doesn't carry out a logical deduction that connects the conclusion of their thesis with the premises. Does he/she wonder the defense: will they put on in risk the tests Of what way? To which do you prove the District attorney he/she refers? It reaches the conclusion without arguing, violating this way the principle of enough razonabilidad, that is to say without valuing the test means in the sense of indicating they will put on in risk the test means of what way. In other terms there is not motivation, that which constitutes a guarantee, because when you is not motivated it cannot exercise the contradictory one. Of what do I defend if I don't know of what I am accused? Of trying to destroy, to deform or to hide the tests? To hinder the probatory activity? How will they achieve these purposes? We don't know it, because the District attorney didn't explain the premises, neither neither she made the logical deduction to reach similar conclusion. Is it more: TO which of the four possible hypotheses it is that it arrived as conclusion? He/she doesn't say it, and worse still if he/she refers to all the possibilities because he/she didn't argue neither an alone of them. He/she wants that we admit a conclusion whose premises are the same conclusion, and this is an argumentative flaw or a sofisma.

The other conclusion that allows the Fiscal instructor to point out that the ends of the insurance measure are completed, consists on affirming that our clients belong to a criminal organization. How does it reach this conclusion? We don't know it because he/she doesn't argue. The district attorney confuses the competition of people in the commission of a crime with the concert to offend. So that criminal organization exists some budgets they should be given, among other: agreement of wills to make plurality of crimes, a structured organization and with permanency vocation in the time and in the space, work division. Does he/she wonder the defense: TO what criminal organization does he/she refer the Office? Which are the members of that criminal organization and which is the structure of the same one? Which are they the test means that they demonstrate their existence? From where does the Fiscal instructor that the analysis of the ends of the insurance measure should be made in a collective way take out and not assisting the personal circumstances of each one of the citizens linked to the investigation?

The conclusion as for the ends of the insurance measure is that the Office didn't motivate the decision, being this an imperative of any providence, be of sustanciación or interlocutory, of conformity with the article 13 of the Code of Penal Procedure. It becomes illegal in this point the decision, because the defense right, the contradiction right, the due process was violated, the principle of legality, the right to the personal freedom.

1.2.- In the event in that I will end up prospering the study of the ends of the insurance stocking, the District attorney will begin the analysis of the second requirement to proceed to the imposition of the preventive detention, consecrated in the article 356 of the Code of Penal Procedure-Law 600 of 2000 - which is the the verification of the existence of at least two serious indications of responsibility with base in the tests legally close to the process.

It is important to stand out that so that there is place to the imposition of the insurance measure, the study of the two previously signal requirements should be positive in a concurrent way, in a such way that yes I will end up to not being configured at least one of them, the District attorney should abstain from imposing insurance measure. This point has been present position for the Constitutional Court in sentence of constitutionality C-774 of July of 2001, 25 with report of the Honorable Magistrate RODRIGO ESCOBAR GIL in the following terms:

“So that the preventive detention proceeds it is not only necessary that the formal and substantial requirements are completed that the classification imposes, but rather it is required, also, and with an unavoidable guarantee reach that who must decree it sustains it its decision in the consideration of the purposes constitutionally acceptable for the same one. The legal approaches of origin and of señalamiento of the ends of the preventive detention, they should converge with the constitutional commands, and they could be object of trial of constitutionality when they are not adjusted to the postulates of the fundamental Letter. If the detention is ordered without considering the principles and values that inspire the Constitution, and in particular, the purposes constitutionally acceptable for the same one, in its appreciation in the concrete case, the presumed offender of the penal law, its defender or the Public Ministry can request the control of legality of the adopted measure, or to make use of the mechanisms constitutionally foreseen for the defense of the fundamental rights, all time that of it, it would be a violation from the constitutional rights to the personal freedom and the presumption of innocence and it would be presented, also, a violation of the due process, if he/she settles down that the law has been applied in a sense excluded as unconstitutional by the Court.”

1.3.- Keeping in mind that the second paragraph of the article 392 of the Code of Penal Procedure the suppositions in that the help of legality proceeds settle down we should manifest to the Office that presently matter the violation of the legality took place for the distortion of the content of the test and the omission in the valuation of test means, added to the ignorance of the healthy

critic's rules, event contemplated in the numeral one 2 of the paragraph 2 of the article before mentioned.

Indeed, in the valuation made by the Fiscal instructor an indirect violation of the law it is presented, for an error in fact, false existence trial that he/she results in a false reason in connection with the valuation of the test means. On this point, and that it corresponds to the causal one first of agreement cassation with the article 207, numeral 1 of the Code of Penal Procedure, the Room of Penal Cassation of the Supreme Court of Justice has traced a line jurisprudencial in multiple pronouncements in the same sense. He/she explains the Room of Penal Cassation that the false trial of identity in connection with the means of test is presented when the juzgador

"(…) nevertheless to consider it legal and appropriately collected, when fixing their content it distorts it, it reduces or it adds in their expression fáctica, making him produce effects that objectively don't settle down in her (false trial of identity) (…)"

for at once to add that the false reason is given when
"without making none of the previous mistakes, existing the test and appreciated in their exact dimension fáctica, when assigning him persuasive merit it transgresses the postulates of the logic, the laws of the science or the rules of the experience, that is to say, the healthy critic's principles as method of probatory valuation (…)."

Likewise, the Constitutional Court has pointed out on the same point in sentence C-805 of October of 2002, 1 with report of the Honorable Magistrates MANUEL JOSÉ CEPEDA ESPINOZA and EDUARDO MONTEALEGRE LYNETT the following thing:

"15.- In connection with the causal ones defined by the legislator to control the measures, these refer to 3 events that allow to question the legality of the minimum test to assure: 1. When it is supposed or it is stopped to value an or more tests. 2. When he/she appears clear and ostensibly demonstrated that it was distorted their content or the logical inference in the construction of the indication, or the healthy critic's rules were ignored. 3. When it is practiced or contributed to the process with ignorance of some conditioning requirement of their validity."

In front of the case that occupies us, the Vicarial Office takes like probatory foundation the phone interceptions practiced by the Administrative Department of Security-you GIVE - and that they constitute the only means of test of the investigation practically. Assuming that the interceptions are test means, since in approach of the defense they are not it to consider them test source, the District attorney points out that they demonstrate the following thing:

1.4.- The form like the bank transactions were structured they demonstrate the laundry of active. It mentions the Office the conversations sustained by the doctor LUSTY REYES with POSED ENRIQUE and FRANCE DEW BARONA.

It is, in concept of the defense, of an error in the probatory appreciation for a false trial of identity. On the point the Room of Penal Cassation of the Supreme Court of Justice has pointed out that

"(…) If that sought is to denounce the configuration of errors in fact for false trials of identity in the probatory appreciation, the casacionista should indicate expressly, how in short he/she says the probatory means that exactly said of him juzgador, how he/she was distorted, it reduced or it added making it produce effects that objectively don't settle down of him, and the most important thing, the definitive repercussion of the mistake in the declaration of contained justice in the resolutory part of the failure"

The interception that works in the folios 1 at the 6 of the notebook of annexed number 4 and that it corresponds to the phone conversation sustained between the doctor LUSTY REYES and POSED ENRIQUE May 21 2003 it is indicating that the economic situation of LLANOS OIL EXPLORATION is difficult in the measure in that there is not silver with what to pay to POSED ENRIQUE. It is spoken of the day in that a money should be paid, of the price of the dollar in the market, of some terms for payments, of possible banks by means of which the transactions can be made.

The Office interprets this conversation like a laundry transaction of active, when the only thing that demonstrates is a negotiation in connection with some money that the company owed and that they correspond to a contract of mutual or of loan. It is logical that if one has lent silver he/she comes to an agreement with the creditor on some aspects. Coarse to read the Civil Code in the articles 1626 and following to settle down that when an obligation will extinguish it should be determined who pays, to who he/she is paid. where it is paid, the expenses of the payment, how it is paid. This cannot be a laundry indication of active, because the indicative fact that is demonstrated is the existence of a debt, of an obligation, but that doesn't indicate that they are washing themselves active. Which is the logical inference that the Office makes to conclude that this interception phone sample the investigated crime? It simply reaches conclusion without being known how. Much less he/she explains or he/she argues why reason the indication is serious.

In connection with the conversation sustained between the doctor LUSTY REYES and FRANCE DEW BARONA that works to folios 15 at 19 of the notebook of annexed number 4, of date July of 2003, 4 the content he/she refers to the form like it will carry out some payments. It is spoken of management checks, of the value of the management checks, of a percentage

to change the checks. What does this demonstrate? As we said it previously, it shows the existence of an obligation and the form like it will carry out the payment. If it was a laundry operation of active, the logical thing would be that who charged a commission it was the doctor LUSTY REYES to lend their bills to make the illicit one. But it is clear that one speaks of a percentage that LUSTY REYES should pay. The world the other way around according to the Office, because it is now that who washes assets pay to wash them, without receiving anything to change.

The misrepresentation of the means of test is evident, it jumps visible, because the Fiscal instructor gives a reach to the conversations that she doesn't have it. What you/they demonstrate is the existence of some loans that you/they should be canceled and the form like this obligations will extinguish. It is not insinuated at least that is of a laundry operation of active.

1.5.- It sustains the Fiscal instructor that to the bills of OIL SERVICES OF THE CARIBBEAN LTDA in the Bank of Credit and BBVA entered money coming from the exterior in dollars like foreign investment and that these they were rotated by means of checks to natural and juridical people. He/she calls the attention of the Office the scarce permanency of the money in the bills and the payment to natural and juridical people that anything has to do with the oil business. He/she adds that soon after the shipment of funds of the main house from Switzerland originated an investigation for laundry of active in the exterior demonstrating that it is unusual the economic activity of LLANOS OIL EXPLORATION. This would be demonstrating the laundry of active.

It distorts the Office the behavior in the bank bills of the companies of our clients. The rules of the experience indicate that the flow of box of a company is this way. Money enters and it leaves money. The companies don't keep their resources for a lot of time in the bank minds since he/she has to extinguish obligations like: loans, suppliers, payroll, to make investments, to pay taxes, to pay leases of offices, teams, public services, etc. In any sector of the economy, to leave the money that enter to the bills of a still company during some time the only thing that you/they generate is losses, since the money has to be moving. The banks don't pay interests to keep deposits in mind current. He/she ignores, because, the Fiscal instructor, the healthy critic's rules and of the experience.

On the investigations in the exterior for laundry of active, the doctor LUSTY REYES was clear in his inquest in manifesting that the investigation that was ahead in Austria was filed by lack of merit, just as it consists in a document of the Office of this country that was confiscated in the levelling diligence to the headquarters of LLANOS OIL EXPLORATION. Then to take this as indication is a blunder of the Office, because what demonstrates is that it was not demonstrated that he/she had washed of active.

In connection with some of the addressees of checks rotated by LLANOS OIL EXPLORATION the explanation he/she gave it the doctor LUSTY REYES in their inquest. The cause of the payments was loans, not oil business. Then, that it is the explanation for which those people don't have to do with the business of the petroleum. As neither it exists test that the beneficiaries will be developing illicit activities.

1.6.- It sustains the Fiscal instructor that FRANCE DEW BARONA accepted that he/she washed active, then our clients also.

The first thing, is that of conformity with the article 281 of the Code of Penal Procedure, once the confession takes place the judicial official he/she will practice the diligences guided to determine the truthfulness of the same one. That is to say, the confession should be proven. This has not happened until the moment. But of another part, in the confession to the one that mentions the Office positions are not made against our clients. Wrong makes, then, the Fiscal instructor in trying to build a serious indication of responsibility on this fact. This fact for if alone it doesn't indicate anything. It is distorting the confession.

1.7.- It concludes the District attorney that so much LLANOS OIL EXPLORATION as OIL SERVICES OF THE CARIBBEAN didn't develop its social object and all the money that you/they received from the exterior it comes from the drug traffic, that is to say that they are companies of paper whose true social object was to wash money of illicit origin.
In this point, what is clear is that the Office omitted to value the test means confiscated in the levelling diligences and the tests contributed by the defense in brief that was received the day October of 2004, 15 just as it consists in the stamps of the same secretary of the National Unit against the Laundry of Active, that is to say three days before the date of the resolution that solved the artificial situation. It is not certain, as it sustains it the Fiscal instructor that said brief has been presented after solving the artificial situation. This tests demonstrate that LLANOS OIL EXPLORATION made payments to diverse companies linked with the business of the petroleum for supreme considerable in dollars, the payment of bonuses, the payment of taxes to the DIAN, among others.

III. - A REFLECTION OF THE DEFENSE.

The lack of guarantees and the violation of fundamental rights on the part of the General Office of the Nation in this investigation are astonishing and terrifying. JORGE'S defense LOZANO REYES has presented three briefs with petitions and they are not even mentioned in the resolutions of the Office instructor, much less they have been given answer. The defense of HENDRIK VAN BILDERBEEK presented previous allegations to the resolution of artificial situation without they have neither been mentioned and answered.

Perhaps the explanation is in the declarations that the General District attorney of the Nation, doctor LUIS CAMILO OSORIO ISAZA, gave the journalist YAMID AMAT and that they were reproduced in the newspaper THE TIME of Sunday October of 2004, 24 page 1-39, in those that one reads:

“That is an aberration to be imprisoned without a judge's sentence, only for the decision of a district attorney.”

At once it indicates:

“Because that people that go to the jail for a district attorney's decision, only my God can defend them”

It finishes off manifesting the following thing on their subordinate ones (the district attorneys):

“To confirm that with the abilities that he/she has there is not any democracy, neither any right to defend”

Without comments.
IV. - APPLICATION.

As conclusion of all it arrives him argued, one has that in the resolution of artificial situation the content of the test means was distorted and it was omitted to value the tests confiscated to our clients in the levellings like those contributed to the process, tipificándose the causal ones that he/she brings the article 392 of the Code of Penal Procedure that it regulates the control of legality of the insurance measure, as for the ends of the insurance measure and the minimum test to assure. It should, because, to prosper the control and to declare the illegality of the measure of consistent insurance in detention, being ordered the immediate setting in the doctors' freedom JORGE LOZANO REYES AND HENDRIK VAN BILDERBEEK.

Cordially,

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