

NATIONAL JUDICIARY
FEDERAL COURT OF ORIGINAL JURISDICTION OF CAMPANA

Campana, April 12th 2010

**RESOLUTION ON A MOTION TO INVALIDATE JUDICIAL PROCEEDINGS FILED BY MR.
FRANCISCO DE NARVÁEZ**

IT APPEARS TO THIS COURT THAT:

This court must resolve on the following issues as set forth by the parties against the backdrop of the foregoing motion.

I. Charges of obstruction [of justice] were brought against Mr. De Narváez, appearing on pages 15449/59 of the main records of the case, originating in actions that Mr. De Narváez allegedly performed, or instructed, upon learning about phone records indicating contacts between a line registered in his name and Mr. Marcelo Segovia. Mr. De Narváez stated that this court lacks competence to investigate the foregoing. Further, Mr. De Narváez sustained that, in the absence of a formal requirement for a preliminary criminal investigation, all subsequent judicial proceedings become invalid.

This court rejects the argument of absence of a formal requirement for a preliminary criminal investigation, and expressly cites the grounds set forth by the Federal Prosecutor's Office on pages 46/48 of the main records of the case: "... the accusation is closely linked to the alleged illegal acts already under investigation in this case." The Prosecutor's Office concluded that "...evidence related to Mr. Francisco De Narváez arises from the investigation led by the judge of original jurisdiction." In fact, the charges described as obstruction [of justice] are neither different nor separate from the judicial investigation in progress in this court of original jurisdiction, but derive directly from actions included in the main records of the case as part of a lawful judicial investigation. Therefore, the rationale in this case does not arise from additional facts, but from preliminary criminal investigation proceedings under a judge who finally pressed charges against the person previously appearing before this court. In view of the foregoing, the judge is enabled to obtain conducive and necessary evidence as he deems fit for clarification of eventual doubts, especially as the foregoing evidence was inconclusive.

Further, the foregoing rationale leads to the dismissal of the motion to declare this court incompetent. This court reiterates that Mr. Francisco De Narváez's actions are materialized in the context of a federal judiciary investigation deriving from this preliminary criminal investigation, or proceedings arising from the natural course of this case investigation.

II. The Federal Prosecutor's Office filed a motion to invalidate de summons served upon Mr. Francisco De Narváez under Section 294 of the Code of Criminal Procedure, appearing on pages 15449/15459 of the main records of the case, as resolved by the

judge then presiding this court. The Prosecutor's Office relies upon the understanding that the inclusion in this investigation of one of the elements of proof leading to the decision would be defective.

The Prosecutor's Office specifically refers to e-mail communications between Mr. Francisco De Narváez and journalist Carlos Pagni, and the manner in which these elements of proof were allegedly obtained. The Prosecutor's Office inference is that the e-mail communications, proffered by an anonymous source, could have been illegally accessed under Section 153 of the Criminal Code and, hence, constitute illegitimate grounds for the summons.

Further, the Federal Prosecutor serving at Federal Criminal Court No. 1 of San Martín, upon resolving on the criminal case arising from the above e-mails, also proffered by an anonymous source, sustained on the same grounds that, "their use in the criminal investigation is illegitimate as it infringes guarantees enshrined in Articles 18 and 19 of the Constitution," (cf. certification of pages 42/43).

In principle, interlocutors in the aforementioned e-mail communications admitted to their existence and stated they were not cognizant of the manner in which they were obtained and disclosed. Therefore, the holders of the corresponding e-mail accounts did not authorize or promote the lawful obtention of the said e-mails. Absence of consent or manifest will invalidates the method of obtention of the said correspondence and, hence, its use in the case is defective.

The summons under review originated in the consideration of exhibits enumerated in the court resolution on pages 15449/15459 of the main records of the case. The defective obtention of the exhibits leads to their disqualification as evidence in the case and, thus, impacts upon the conclusive results of their appraisal at court in relation to the case. Therefore, a summons based upon tainted evidence is inevitably invalid.

The summons is an indivisible stage in the proceedings, and valid components may not be severed from invalid counterparts therefrom. Thus, the summons becomes absolutely null and void.

Both the "Fruit of the Poisonous Tree" doctrine and the Exclusionary Rule are contemplated in the first paragraph of Section 172 of the Procedural Code and in Supreme Court jurisprudence. The Supreme Court applied this doctrine to varying degrees in the Montenegro and Fiorentino decisions (Supreme Court rulings 303:1938 and 306: 1752, respectively). The foregoing considerations indicate that the recovered evidence was obtained illegally.

In the Montenegro decision, the Supreme Court ruled that evidence obtained in violation of constitutional rights is inadmissible as incriminatory evidence in a court of law. The facts of the case "were proven by means of an investigation based upon the out-of-court confession of the defendant under duress while held in custody".

In the Fiorentino decision, the affected constitutional guarantee was the inviolable right of people to be secure in their homes; hence, evidence was the result of an illegal search and seizure procedure. Upon ruling on the invalidity of the search and seizure, the Supreme Court sustained, "The same applies to the seizure of marijuana under the circumstances. The seizure of the *corpus delicti* is but the result of an illegal procedure and admitting it as grounds for conviction would be tantamount to admitting the use of illegal means in criminal prosecutions, thus holding against the defendant incriminatory evidence obtained in violation of constitutional guarantees (case doctrine, Supreme Court Resolutions 46:36). The foregoing is not only contrary to the charges but also jeopardizes the good administration of justice by intending to obtain a benefit from an illegal act."

Along this line of thought, all evidence obtained in violation of constitutional guarantees and, thus, in disregard of the right to due process of law, becomes ineffective as applicable in each case.

Therefore, since the evidence under review may not be appraised in a court of law, and the summons under review is based upon a legal defect, it is appropriate for this court to invalidate the summons served upon Mr. Francisco De Narváez pursuant to Section 294 of the Code of Criminal Procedure.

III. Notwithstanding the foregoing, this court may not disregard the terms and scope of the resolution issued by Federal Trial Court No. 2 with Jurisdiction in Criminal Matters in San Martín, a higher competent court designated as the trial court for this case. The court ruled on the parameters all summonses must observe pursuant to Section 294 of the Code of Criminal Procedure.

Federal Trial Court No. 2 with jurisdiction in Criminal Matters in San Martín ruled on the indetermination of previous charges and invalidated several defendants' depositions, and proceedings arising from them. This court made reference to the foregoing in its resolution dated March 23rd (cf. pages 15449/459 of the main records of the case: "Introduction"), stating as follows: "As regards the defendant's right to speak before a court of law during the proceedings, by means of a deposition, the latter is governed by rigorous rules of procedure. Our procedural code contemplates a substantive formality following the usual identification of the defendant, i.e. 'the judge shall thoroughly inform the defendant of the charges brought against them,' and shall indicate to the defendant, 'the existing incriminatory evidence'" (Section 298 of the Code of Criminal Procedure).

Following is the trial court's position upon reviewing the proceedings ordering the depositions of defendants Rodrigo Pozas Iturbe, Guillermo Enzo Manfredi, Alberto Augusto Abraham, Victor Antonio Wendlig Duarte, Miguel Angel González, Rubén Alberto Galvarini, Horacio Jorge Quiroga and Walter Garrido, as resolved by the former presiding this court: "This court wonders what specific conduct [the judge presiding the lower court] is describing; what specific activity was financed, how, when and among whom. The former queries would be suggested but not confirmed by the mere admission to forming part of an organization of more than ten participants. Suffice it to

note that there is no evidence of how some of the defendants are related to the said organization, especially considering that the defendants are not acquainted with one another. Further, at least in principle, the extent of confusion [in the case] prevents the identification of any hint or line of thought indicative of the defendants' connection to such intricate plot. The text [under review at this court] lacks the ineluctable description of the facts. All defendants alike are accused of 'facilitating a venue or elements to perform the acts'. The venue, elements and acts should have been described in the text under review (Section 298, Code of Criminal Procedure)."

The foregoing position is compelling and self-explanatory. The trial court demands a minimum standard of evidence and the description of the charges prior to ordering a defendant's deposition at court.

It should be noted that the trial court's position led to the renewal of proceedings, the accurate determination of the charges, the issuance of new resolutions on the merits of the case, the modification of the nature of the charges and the invalidation of previous charges. Further proceedings included the decision to order the immediate release of Mr. Miguel Angel González given the absence of sufficient evidence to prove him guilty as charged.

The trial court further upheld that, "The investigative judge restricted [his proceedings to] classifying behaviours by citing actions described in the Drugs Law (Law No. 23737), including smuggling, which he reiterated when citing sections of the said legislation, but failed to determine the facts leading to the charges. This conceptual gap failed to meet constitution-based procedural requirements demanding thorough information on the facts for which the defendants are held accountable. Therefore, the defendants were unable to deny or counteract the said facts, or even invoke exculpatory circumstances," (text underlined by the undersigned).

Notwithstanding the resolution to invalidate proceedings to be issued by this court, and this court's duty to abide by resolutions from higher courts (in this case, the trial court), it is in order to note that requirements set forth by Federal Trial Court No. 2 with Jurisdiction in Criminal Matters in San Martín, ordering the defendant's deposition in court pursuant to Section 294 of the Code of Criminal Procedure, are on no accounts met by the resolution appearing on pages 15449/15459 of the main records of the case in relation to evidence standards.

In view of the foregoing, in conformity with the opinion of the Federal Prosecutor's Office and pursuant to Sections 166, 170 and 172 of the Code of Criminal Procedure; now, therefore, be it

RESOLVED, That the motion filed by Mr. Francisco De Narváez on pages 12/31 to invalidate the proceedings on the grounds of absence of a formal requirement for a preliminary criminal investigation be dismissed, as well as the court incompetence derived therefrom; and

RESOLVED, That the summons served upon Mr. Francisco De Narváez, ordered on pages 15449/15459 of the main records of the case by the former judge presiding this court, Federico Efrain Faggionato Marquez, be declared invalid.

Be it recorded and notified as appropriate.

[Signature]

ADRIÁN GONZÁLEZ CHARVAY

Judge *Pro Tempore*

Signed before me,

[Signature]

MATÍAS LATINO

Federal Court Clerk

Notice hereof issued as of this date.

MATÍAS LATINO

Federal Court Clerk