

CIRCUIT CRIMINAL COURT 10

Santafé de Bogotá, Capital District, April 22, 1997

SUBJECT MATTER OF RULING

Luis Hernan Manco Monroy, Oscar Alberto Giraldo Arango, Oscar Dario Puerta, Luis Adolfo Cardona Usma and Dorlahome Tuberquia Echavarría brought a *tutela* action for constitutional relief, at their own initiative, against the company Bebidas y Alimentos de Urabá S.A., seeking protection for the rights to life, work, equal protection, freedom of association, dignity, human respect, freedom of conscience and the right to engage in collective bargaining, as embodied in the Constitution.

STATEMENT OF FACTS

Petition

In their petition bringing the *tutela* action for constitutional relief the plaintiffs stated that they worked at Bebidas y Alimentos de Urabá S.A., a company engaged in the bottling of Coca-Cola products, and that they were members of the company union's board of directors.

Plaintiffs stated that on November 29 of last year they presented a list of demands to the company on behalf of the workers, which the company representatives refused to discuss. A number of things occurred after that, such as the murder of the union secretary, the fire at the head offices and paramilitary groups forcing the union workers in the area to quit the union en masse. Their lives were also threatened, and they felt compelled to leave the area for the city of Bogota, where they are at the present time, making use of the union leave to which they are entitled as union officials.

Plaintiffs alleged that the company had not paid them their wages, family subsidy, travel allowance or Easter bonus since the second half of January of this year.

Plaintiffs stated that the company had taken no action of any kind to ensure their safety, nor had it done anything to prevent paramilitary groups from entering the company and intimidating all the workers.

Plaintiffs stated that they had pursued all legal avenues, but had not been provided with the necessary protection. They filed complaints with government agencies, the Office of the Prosecutor General (*Fiscalía General de la Nación*), labor ministries, the Office of the Ombudsman (*Defensoría del Pueblo*), the Human Rights and the Office of the Attorney General (*Procuraduría General de la Nación*). Copies of such complaints were attached to the petition in the *tutela* proceeding.

Plaintiffs stated that the proceeding brought before the Ministry of Labor was for the

protection of their rights, asserting that they had received no protection to date, since the Ministry of Labor had not compelled the company to fulfill its obligations in relation to the list of demands and the personal circumstances of each of the plaintiffs. Copies of records and various investigations carried out by the Office of Labor Inspector 22 were attached to the petition.

Evidence

Attached to the action were the documents filed by the plaintiffs with the various government agencies, the Ministry of Labor and Bebidas y Alimentos de Urabá S.A.

On April 16 of this year Luis Hernan Manco Monroy, Oscar Alberto Giraldo Arango, Luis Adolfo Cardona Usma and Oscar Dario Puerta appeared at a hearing to ratify the petition in the *tutela* action and amend it to include additional claims. After stating their agreement with the statements made in the petition, they unanimously asserted that since the second half of January 1997 the company had not paid them their wages or other benefits to which they are entitled under the collective bargaining agreement. They also stated that they could not return to the area, because their lives were in danger and they had insufficient protection.

On April 17 of this year a statement ratifying the petition in the *tutela* action and amending it to include additional claims was filed by co-plaintiff Dorlahome Tuberquia Echavarría, who asserted that there had been no response to the complaints he and his fellow union members had filed. He also stated that he had fled the area because word had reached him that his life was in danger due to threats made against him by paramilitary groups. Like his co-plaintiffs, he stated that he had not been paid any wages since the second half of January of this year.

Testimony was also taken from Ms. Maria Silvia Stella Enciso Rodriguez, who stated that she was currently the Comptroller of Bebidas y Alimentos de Urabá S.A. and had been the company's alternate legal representative. In regard to the facts and events which form the basis for the *tutela* action, she said the company was more than willing to satisfy all its legal obligations, as the current legal representative had stated in a letter attached to this *tutela* action.

Ms. Enciso stated that the threats had come from outside the company, and that the company had asked the Ministry of Labor and Social Security to settle the payment dispute with the workers who had brought the *tutela* action, given the fact that there was work for the workers to do in the Urabá area, but they were not showing up for work.

Ms. Enciso pointed out that, even when the company was faced with violations of basic rights, at no time did it infringe such rights. Quite the reverse, immediately upon becoming Manager of the company Ms. Peggy Killan [*sic*] sought protection for the workers from General Rito Alejo del Río, who ordered an investigation.

In a letter of transmittal dated April 21 of this year Ms. Silvia Enciso de Saenz sent this

Court a letter that had been sent to Labor Inspector 22, the answer in the case of Mr. Dorlahome Tuberquia, the minutes of a meeting held to settle the case of Mr. Tuberquia, an action under the labor code relating to the legal rights of organized labor, an official letter to Labor Inspector 22, a letter to Colonel Navas Ramos Alejandro, collection account no. 008, a security study commissioned from the National Army, and other documents.

Official letter 2111 of the Office of the Prosecutor General dated April 22, 1997, states that the pleading of the National Labor Union for the Food Industry (SINALTRAINAL) was served on the Director of the Antioquia District Prosecution Unit (*Director Seccional del Fiscalía de Antioquia*) as a photocopy attached to official letter DNF/NHLS/05051 dated January 31, 1997.

LEGAL ANALYSIS AND HOLDING

Article 85 of Colombia's Constitution provides that any person may exercise the right to bring a *tutela* action, either directly or through a person acting on his or her behalf, seeking the immediate protection of the courts for his or her basic constitutional rights, whenever such rights are violated or threatened by an act or omission of any public authority. Such right can also be properly exercised in the event the affected party has no legal recourse "other than using [the *tutela* action] as an interim measure to prevent irreparable harm."

In their petition in the *tutela* action the plaintiffs enumerated and sought protection for their fundamental rights to life, work, equal protection, freedom of association, dignity, human respect, freedom of conscience and the right to engage in collective bargaining. To determine whether the aforesaid basic rights have indeed been violated, this Court will now examine each special right individually.

In regard to the first such right — the right to life — this Court notes that it is the first of the basic rights, being inherent to the individual, in that existence is the only prerequisite to have the right to life. Moreover, present, past or future life is considered a precondition for having rights. Thus, life is a prerequisite for the exercise of other rights.

On this subject Dr. Fabio Moron Díaz wrote in the opinion for Constitutional Court Ruling T-452 of July 10, 1992, that "Without getting into hard and fast definitions of this right, since exactly what constitutes life is beyond man's current understanding, in legal thinking, which is an expression of the consensus of society, life is non-death, and the right to life is the guarantee to the individual that no one shall cause his or her death as a voluntary act. It is the right to die from natural causes or from an illness not caused by another."

But a threat to life like the one the plaintiffs claim to be under can have varying degrees of seriousness, ranging from acts that result in a marginal increase in the danger to an individual, to acts that pose an imminent threat of attack. Separate and distinct from

criminal liability in each of these circumstances, the Constitution protects persons against all acts which may put their lives in objective danger. The Constitution protects the basic right to life, and such protection is properly invoked whenever such right is impaired, regardless of the extent.

From the constitutional standpoint, therefore, the basic right to life is violated by acts that put such right in objective danger, even though the danger may not be imminent.

Nevertheless, it would be naive to believe that the express embodiment of the right to life in the Constitution works like a magic formula on our political and social conditions, to make Colombia a peaceful society. Establishing this right in the Constitution is meaningful and important as an expression of the national will to create the necessary conditions, so violence will no longer be used as a way to settle disputes.

In the case at hand, while it is true that the plaintiffs' lives were threatened by strangers to this action, and their right to life was threatened to the point that they had to leave the place where they worked and lived with their families and relatives, it is also true that once they brought these threats to their basic right to the attention of the government authorities, their complaints were heard, as they themselves acknowledge, since they state that the Office of the Prosecutor General has intervened in the matter and begun investigations through its local offices to get to the bottom of what happened, and that the police have offered adequate protection for the plaintiffs to stay in the area and go about their business as usual. Further evidence of this is given by the fact that the legal representative of Bebidas y Alimentos de Urabá S.A. thanked the commander of the Batallón Voltígeros de Carepa in a letter dated February 20, 1997, for finding a company vehicle that had been stolen, and commissioned a security study of the company's facilities, which was conducted.

Consequently, this Court must not disregard the fact that, despite the threats against the plaintiffs' lives, the proper authorities took appropriate action to protect them, investigate who was behind the threats, and punish conduct prejudicial to this fundamental right.

The basic right of equal protection is established in Article 13 of the Constitution. Directly applicable in the case at hand is Article 10 of the Substantive Labor Code (*Código Sustantivo del Trabajo*), which states that "[A]ll workers are equal in the eyes of the law and enjoy the same protections and guarantees. Consequently, all legal distinctions among workers based on the mental or physical nature of their work, the manner in which it is performed or how it is compensated are abolished, except as provided by law."

It is important to note in the case at hand that the right the plaintiffs assert was violated was not shown to have been violated by the company's representative. The plaintiffs state that groups from outside the company came in and forced them to leave the region. The same set of circumstances applies to the rights of freedom of association, dignity, human respect and freedom of conscience. Luis Hernan Manco Monroy, Oscar Alberto Giraldo Arango, Oscar Dario Puerta, Luis Adolfo Cardona Usma and Dorlahome Tuberquia

Echavarria are unanimous in asserting that it was paramilitary groups in the region that came into the company, rounded up workers and gave them a deadline for quitting the union. Nowhere has it been established that any company executive ever played a role in violating the aforesaid rights. Quite the reverse, the documents produced in this *tutela* action indicate that the violations of both fundamental rights and criminal laws were reported to the authorities, who are properly investigating them.

It should also be noted that the company did not stop at simply reporting the violations of the law, but took action to heighten security at the company, hiring a security firm for the plant and commissioning a security study from the National Army. As far as the plaintiffs, moreover, the company asked for them to be protected by government agencies and even the programs designed by the government to protect persons displaced by violence. Consequently, the petition for protection of the basic rights which concern us here cannot be granted, since the party against which the *tutela* action was brought, Bebidas y Alimentos de Urabá S.A., was not at fault for the violation of basic rights.

In regard to the equally basic rights to work and engage in collective bargaining, this Court must note that, as a practical matter, such rights are vested in the Ministry of Labor and the federal labor courts, which have taken the appropriate steps to settle the dispute through the Office of Labor Inspector 22 at the first stage of the judicial process. Indeed, the record shows that, once members of the National Labor Union for the Food Industry (SINALTRAINAL) brought to the labor inspectors' attention that monthly payments of wages and other benefits established in the collective bargaining agreements had not been made, Labor Inspector 22 summoned the company's representatives to appear not once, but several times. When the representative came to the labor inspector's office, efforts were made to settle the dispute and minutes were taken of the meeting. At one of those meetings the company paid the amounts due to each member of the union's board of directors up through the first half of January 1997.

In regard to the amounts due and payable from that date up through the present, affiant Maria Silvia Enciso Rodríguez has stated that progress has been made on arrangements for the Ministry of Labor and Social Security to broker the final settlement in the dispute between the workers and the company.

The Court must also note that the current legal representative of Bebidas y Alimentos de Urabá S.A. has stated that they are waiting on the members of the union's Board of Directors to come to the bottling plant in the Municipality of Carepa, in order to negotiate the list of demands presented by those board members. Talks could not begin in their absence.

It is this Court's view, however, that a *tutela* action for constitutional relief is not the proper route for seeking protection of the basic rights cited by the plaintiffs in their petition, because the petition's premise falls within the scope of Article 6(1) of Decree 2691 of 1991, which provides that no *tutela* action shall lie if other legal remedies or recourse are available.

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In point of fact, before seeking constitutional relief the plaintiffs should have waited for the public authorities with which they had filed their complaints to take appropriate action to remedy the alleged violations, as was in fact occurring by the plaintiffs' own admission. Thus, in the case of Oscar Alberto Giraldo Arango, this Court learned that the Office of the Presidential Adviser (*Consejería Presidencial*) sent letters to the police stationed in Carepa, so the individuals who filed the complaints would be provided with the proper protection. Letters sent by the Office of the Prosecutor General indicate that the District Prosecution Unit (*Unidad Seccional de Fiscalía*) headquartered in the Municipality of Chigorodó Antioquia is making progress in the investigation into the December 5, 1996 fire at the building located at Carrera 76, No. 73, 33 Barrio Maria Cano, in the Municipality of Carepa. In addition, the Office of the Prosecutor General ordered an investigation into the facts and events reported by the board members who signed the petition in the *tutela* action, since none was yet underway.

The *tutela* action brought by Luis Hernan Manco Monroy, Oscar Alberto Giraldo Arango, Oscar Dario Puerta, Luis Adolfo Cardona Usma and Dorlahome Tuberquia Echavarria fails for the reasons set forth above. As the Constitutional Court has consistently held, the *tutela* action for constitutional relief is a special, stopgap measure that cannot be invoked so long as ordinary legal remedies have not been exhausted or any such remedies are still pending, as they are the case at hand.

It is clear that the plaintiffs have filed complaints alleging violations of basic rights with the proper authorities: The Office of the Prosecutor General, the Office of the Ombudsman, the Office of the Attorney General and the Ministry of Labor. In response to the complaints, each and every one of these entities has taken appropriate legal action to protect basic rights. In addition to the entities listed above, the efforts have included other organizations, such as the Special Adviser to the Ministry of the Interior (*Consejería del Ministerio del Interior*), which have pressed for the protection of the plaintiffs' inherent rights.

Accordingly, this Court will deny the petition of plaintiffs Luis Hernan Manco Monroy, Oscar Alberto Giraldo Arango, Oscar Dario Puerta, Luis Adolfo Cardona Usma and Dorlahome Tuberquia Echavarria on the basis of the foregoing arguments.

By virtue of the foregoing, Criminal Court 10 for the Circuit of Santafé de Bogotá, Capital District, administering justice in the name of the Republic and by the authority of the Law,

Hereby Resolves As Follows:

1. The *tutela* action for constitutional relief brought by Luis Hernan Manco Monroy, Oscar Alberto Giraldo Arango, Oscar Dario Puerta, Luis Adolfo Cardona Usma and Dorlahome Tuberquia Echavarria is denied for the reasons set out in the "conclusions of law" section of this decision.
2. This decision is ordered served on all parties to the *tutela* action, as required by

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Articles 30, 31 and 32 of Decree 2591 of 1991, and on the Constitutional Court within the time-limit provided by law, for possible review.

This decision is ordered copied and served on all parties. So ordered.

The judge,

/s/

Carlos Alberto Forero Garcia

/s/

Henry Escorcia Clavio
Clerk of the Court

[Stamps illegible]