



LA REPUBLICA BOLIVARIANA DE VENEZUELA
EN SU NOMBRE

EL TRIBUNAL SUPREMO DE JUSTICIA

BOLIVARIAN REPUBLIC OF VENEZUELA

JUDICIAL BRANCH

FIRST COURT OF FIRST INSTANCE IN CONTROL FUNCTIONS
HEARINGS AND MEASURES WITH JURISDICTION IN CRIMINAL MATTERS
OF VIOLENCE AGAINST WOMEN OF THE JUDICIAL CIRCUIT
BOLIVAR STATE PRISON, TERRITORIAL EXTENSION
PUERTO ORDAZ

Puerto Ordaz, August 16, 2010 200th
and 151st

MAIN SUBJECT: FP12-S-2010-001475

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ORDER JUSTIFYING THE PROTECTION MEASURE
AND PRECAUTIONARY MEASURE IN LIEU OF FREEDOM

This First Court of First Instance in Control, Hearings and Measures Function with jurisdiction in matters of Crimes of Violence against Women of the Criminal Judicial Circuit of the State of Bolívar, Puerto Ordaz Territorial Extension, is responsible for substantiating, in accordance with the provisions of article 173 of the Organic Criminal Procedure Code in relation to article 93 last paragraph of the Organic Law on the Right of Women to a Life Free of Violence, the decision issued in the hearing held today, to hear the accused FRANKLIN JOSÉ BERICOTO GUANARE, HOLDER OF IDENTITY CARD No. V-8.288.530, 35 YEARS OF AGE BORN ON 02-01-1975 IN BARCELONA – STATE OF ANZOÁTEGUI, SON OF JOSÉ VICENTE NEGRÓN and TERESA GUANARE, OF OCCUPATION: COORDINATOR OF THE COORDINATION DEPARTMENT OF THE MAYOR'S OFFICE OF THE CARONÍ MUNICIPALITY; RESIDE IN: SABANA DE PIEDRA NEIGHBORHOOD, ONCE DE ABRIL STREET,

HOUSE NO. 10, YELLOW IN COLOR, LOCATED BEHIND THE DALLA COSTA FOOTBRIDGE, SAN FÉLIX – BOLÍVAR STATE. TELEPHONE: 0416-090.0386, who is duly assisted by the Public Defender, ATTORNEY MARISOL VALOR, who acts as Guard, by virtue of which it is observed:

BACKGROUND

On August 8, 2010, a document was received from the Sixteenth Prosecutor's Office of the Public Ministry of the Second Circuit of the Judicial District of Bolívar State, through which it presents before this competent authority the citizen FRANKLIN JOSÉ BERICOTO GUANARE, in accordance with the provisions of Article 49, paragraphs 1 and 2, of the Constitution of the Bolivarian Republic of Venezuela in relation to Article 130, first paragraph, of the Organic Criminal Procedure Code.

On August 8, 2010, the Oral Hearing for the Presentation of the Accused was held, in accordance with Article 93, third paragraph, of the Organic Law on the Right of Women to a Life Free of Violence, and, after hearing the parties, this Court proceeds to issue the corresponding pronouncement and in this sense it is verified whether the Public Ministry proved the assumptions of Article 250 of the Organic Criminal Procedure Code, in this sense the review of the actions is carried out in the following terms.

OF THE FACTS.

It is recorded in the fifth (05) Common Complaint Report of citizen ASCANIO JULIANY, dated 07-08-2010, in which she reports: "I am here to report an incident that occurred at my residence located in the URB. VILLA BRASIL, RIO DE JANEIRO STREET, BLOCK 01, FLOOR 02, APT 05, PTO. ORDAZ, when suddenly my ex-concubine BERICOTO GUANARE FRANKLIN JOSE arrived at the same on 07/08/10 at 03:40 am, he showed up, yelled from downstairs through the window, and I went out, spoke with him, and told him what he was doing in these parts, that it was very dangerous, and he went to the bus stop. Suddenly he returned and began throwing stones at the house and started verbally abusing me, demanding that I hand it over to one of my sons, Franklin Jesús. When I refused, he threatened to kill me and He told me that if I reported him, I would pay for it. He continued throwing stones, breaking the window of the apartment below and splintering the window of my apartment. While all this was happening, I started calling 171 (the emergency number), and he began talking to my stepfather, Rafael Lizardi, saying he wanted his son and told him to come and fight him. A commission from the Bolívar State Police arrived at the scene, and he ran away until they found my ex-partner and arrested him. I want to state for the record that we signed a protection order in court before Prosecutor Katherinne Comisso, which is why I am filing this complaint, since he did not comply with it. I want to emphasize that I don't remember the day I reported him or when we signed the protection order. Previously, during his last physical attack, he hit me and burned my clothes. He verbally assaulted me with obscene words and finally told me that if I reported him, I would pay for it.

"I fear for my life and the lives of my entire family because I don't know what he is capable of doing." THAT'S ALL.

OF THE LAW In view

of the facts narrated, this Court proceeds to analyze whether the assumptions are proven

of article 250 of the Organic Criminal Procedure Code, which make the application of the coercive measures requested by the parties appropriate, by virtue of which it is determined that the following was proven in the proceedings: 1.-The existence of a punishable

act, pre-qualified by the Public Ministry, as the crime of THREAT, foreseen and sanctioned in article 41 of the Organic Law on the Right of Women to a Life Free of Violence, which establishes:

Article 41. Any person who, through verbal expressions, writings or electronic messages, threatens a woman with causing her serious and probable harm of a physical, psychological, sexual, labor or patrimonial nature, shall be punished with imprisonment from ten to twenty-two months.

The Threat, is defined in numeral 3 of article 15 of the Special Law, as "the verbal announcement or with acts of the execution of a physical, psychological, sexual, labor or patrimonial damage in order to intimidate the woman, both in the domestic context and outside of it."

In this regard, this Court observes that, from a review of the proceedings, it can be presumed that we are indeed dealing with the crime of THREAT, foreseen and sanctioned in Article 41 of the Organic Law on the Right of Women to a Life Free of Violence, since, according to the victim's statement, she was verbally assaulted by citizen FRANKLIN JOSÉ BERICOTO GUANARE, who made verbal threats against her, probably of a physical nature, such as causing her death. This Court finds her statement credible and corroborated by the interview transcript of citizen MACHADO ISMAEL and LIZARDI RAFAEL, who stated their knowledge of the events, in which they indicated the threats made against the victim in this proceeding. Furthermore, the proceedings include the Police Investigation Report, dated August 7, 2010, which records the flagrant circumstances in which the aforementioned individual was apprehended. accused, as stated in the arrest report.

In this regard, it is noted that, as required by Article 250.1 of the Criminal Procedure Law, the criminal offenses that this Court considers proven deserve a prison sentence, as is the case of the crime of THREATS, which is punishable by imprisonment of six to eighteen months; these criminal offenses are not evidently prescribed, since, as evidenced by the complaint, they occurred on August 7, 2010.

2. There are well-founded elements of conviction to believe that the accused has been the perpetrator or an accomplice in the commission of a punishable act; this Court specifies that the records reveal well-founded suspicions that citizen FRANKLIN JOSÉ BERICOTO GUANARE has likely been the perpetrator of the crime of THREATS, foreseen and sanctioned in Article 41 of the Organic Law on the Rights of Women to a Life Free of Violence, to the detriment of citizen ASCANIO JULIANY, as evidenced by the complaint of the victim who identifies the now-accused as the person who made verbal threats against her, likely to cause her physical harm, such as death. This Court finds her testimony credible and corroborates it with the interview record of citizen MACHADO ISMAEL and LIZARDI RAFAEL, who stated their knowledge of the events in which they indicated the threats made against them.

uttered to the victim citizen in the present procedure, in addition to this, the Police Investigation Record, dated 07-08-2010, is included in the proceedings, through which the flagrant circumstances in which the now accused was apprehended are recorded, as was stated in the arrest record and when proceeding to the identification of the apprehended person, he responds to the name of FRANKLIN JOSÉ BERICOTO GUANARE.

In this regard, and since there is no element that undermines the credibility of the victim's statement, this Court considers that the records contained in this matter constitute sufficient elements to consider that the citizen FRANKLIN JOSÉ BERICOTO GUANARE has allegedly been the author or participant in the crime of THREATS, foreseen and sanctioned in article 41 of the Organic Law on the Right of Women to a Life Free of Violence.

OF THE PROTECTION AND SECURITY MEASURE.

Now, taking into consideration that the circumstances narrated in the records, this judge considers that such facts involve situations that constitute a threat and vulnerability to the woman's integrity, it is therefore appropriate to apply preventive measures to safeguard the physical and psychological integrity of the woman and her family environment in an expeditious and effective manner. Consequently, a Protection and Security Measure is imposed in favor of the victim, ASCANIO JULIANY, prohibiting him from approaching the assaulted woman. Furthermore, the alleged aggressor is prohibited from approaching the workplace, school, and residence of the assaulted woman. Likewise, the alleged aggressor is prohibited, either personally or through third parties, from carrying out acts of persecution, intimidation, or harassment against the assaulted woman or any member of her family. Finally, a transit arrest is decreed, for forty-eight (48) hours, all in accordance with the provisions of Article 87, paragraphs 5, 6 and 7 of the Organic Law on the Right of Women to a Life Free of Violence.

OF THE PRECAUTIONARY MEASURE IN LIEU OF FREEDOM

However, this Court observes that while it is true that the assumptions of article 250, paragraphs 1 and 2 of the Organic Criminal Procedure Code are proven, it is no less true that there is no reasonable presumption of danger of flight or obstruction, by virtue of this, in order to pronounce in relation to the Coercive Measure to be imposed, it observes that article 44 of the Constitution of the Bolivarian Republic of Venezuela, in its final part, establishes; "Personal liberty is inviolable; consequently:... He shall be tried while free, except for the reasons determined by law and assessed by the judge in each case." In this same vein, Article 243 of the Code of Criminal Procedure establishes: "Any person accused of participating in a punishable act shall remain free during the proceedings, except for the exceptions established in this Code." Furthermore, the penalty for the crime attributed to citizen Franklin José Bericoto Guanare carries a prison sentence ranging from six (6) to eighteen (18) months. In this regard, Article 253 of the Organic Code of Criminal Procedure establishes: "When the crime in question warrants a prison sentence not exceeding three years at its maximum, and the accused has had good pre-offense conduct, which may be proven in any suitable manner, only precautionary measures shall be applied." substitutes".

Therefore, in the present case, the only appropriate measure is a Precautionary Measure Substituting for Liberty. For this reason, the defendant FRANKLIN JOSÉ BERICOTO GUANARE is hereby ordered to appear every fifteen (15) days before the Sheriff's Office, all in accordance with the provisions of Article 256, paragraph 3 of the Organic Criminal Procedure Code, in conjunction with Article 89 of the Organic Law on the Right of Women to a Life Free of Violence. AND SO IT IS DECIDED.

OF THE PROCEDURE TO FOLLOW

Regarding the procedure that should govern the present case, this Court, after analyzing the circumstances of manner, place and time in which the events occurred and hearing the request of the Public Ministry, considers that the appropriate thing is to agree to the application of the SPECIAL PROCEDURE, all in accordance with the provisions of article 94 of the Organic Law on the Right of Women to a Life Free of Violence and SO IT IS DECIDED.

DEVICE

Based on the aforementioned factual and legal grounds, this First Court of First Instance in its capacity as a Control, Hearings and Measures Court with jurisdiction over Crimes of Violence against Women of the Criminal Judicial Circuit of the State of Bolívar, Puerto Ordaz Territorial Extension, administering justice in the name of the Bolivarian Republic of Venezuela and by the authority of the Law, orders the following: FIRST: In accordance with the provisions of Article 87, paragraphs 5, 6 and 7 of the Organic Law on the Right of Women to a Life Free of Violence, it is agreed to impose PROTECTION AND SECURITY MEASURES in favor of the victim ASCANIO JULIANY.

SECOND: It is agreed to impose a PRECAUTIONARY MEASURE SUBSTITUTING LIBERTY on the accused FRANKLIN JOSÉ BERICOTO GUANARE, identified above, for which the accused must appear every Fifteen (15) days before the Sheriff's Office, all in accordance with the provisions of article 256 ordinal 3 of the Organic Criminal Procedure Code.

THIRD: The application of the SPECIAL PROCEDURE, established in Article 94 of the Organic Law on the Right of Women to a Life Free of Violence, is hereby decreed. Publish, register, record, and provide a copy of this decision.

FIRST JUDGE OF CONTROL, HEARING AND MEASURES

ABGA. MAXIMILIANA C. GIL MILLAN

COURTROOM SECRETARY

ATTY. LUZMARY VALLEJO