

TRANSLATION

WRIT

IN MADRID ON MARCH ELEVEN TWO THOUSAND FIVE

FACTS

SINGLE. - This proceeding was filed as a result of the facts arising from the previous actions, having carried out the investigation measures as recorded in the writs.

Having been transferred to the District Attorney's Office it informs that: "The Attorney, giving notice as agreed in the previous formalities 253/2002 of the First Instance Criminal Court No. 5 states: 1.- The previous proceeding was filed to ascertain and verify alleged criminal activities of moneylaundering provided for and sanctioned in articles 301 and subsequent ones of the Penal Code, in relation to the events described in section 1, subsections a) and b) of the judgment of this Special Prosecution Office dated 24.05.02 which was submitted at the previous formalities 161/2000 separate document "Puerto Rico" of this same Court. 2.- On 08.07.02, in this proceeding, a request was made, for the purpose of verifying the truthfulness of the presumptively criminal operations declared by the protected witness NELSON RODRÍGUEZ LÓPEZ, to execute the formalities mentioned in sections 3, 4, 5 and 6 of the report dated 08.07.02, which were deemed essential for considering the illegality of said operations verified as evidence. Such request was again reiterated by the District Attorney's Office on 02.12.02.3.- The formalities in which there was interest were the deposition of the protected witness NELSON RODRÍGUEZ LÓPEZ; the depositions by several directors and/or employees of BBVA, whom the protected witness directly linked to the presumptively criminal operations; the request to BBVA to provide documents on the purchase of shares and the recapitalization of Mercantil Probusa, regarding the exchange of shares BBA-Banco Ganadero, with respect to loans made in the period between 1994-1999 to JOSÉ MADARIAGA, MARCO AURELIO ROYO ANAYA and/or to instrumental corporations belonging to the latter, and on assets, deposits and accounts which JOSE MADARIAGA and EDUARDO PÉREZ MONTOYA could have, either directly or indirectly in the entities BBV Privanza or BBVS.A., from Grand Cayman; and the sending of letters rogatory to the competent Authorities of Mexico, United States and Colombia in order to determine the veracity of some data that are essential for the investigation. 4.- Nevertheless, the processes whose execution was undertaken have not offered positive results from the incriminatory perspective, for purposes of determining a minimally well founded objective charge of laundering of money originating from drug trafficking. No deposition has been received from the protected witness NELSON RODRÍGUEZ LÓPEZ, which was considered absolutely necessary, as stated in the report of 08.07.02, in order to make a value judgment about the reliability, credibility and likelihood of his deposition, even more so when taking into account that other processes undertaken substantially contradicted some of the documents contributed by the witness to justify the reality of specific

transfers linked to one of the operations which is the subject of the investigation. In particular, one must note the expert report issued by KPMG (appearing on pages 2194 to 2239 of this proceeding) regarding the irregularities observed in the documents contributed by NELSON RODRÍGUEZ to justify the existence of some transfers. The depositions by the directors and/or employees of BBVA linked to the operations under suspicion (section 5 of the report of 08.07.02), in general contradict the information provided by the witness NELSON RODRÍGUEZ LÓPEZ (these are included in volume 15 of the proceedings. The documents attached to the case, either provided by BBVA, or obtained through international judicial assistance (through the sending of letters rogatory which in some cases have not even been answered by the requested Authorities), have not provided elements of corroboration or confirmation of the initial suspicion based on the depositions of the protected witness NELSON RODRÍGUEZ LÓPEZ.

5. – The structuring of the criminal money laundering offense, regulated by art. 301 of the Penal Code, according to consolidated and reiterated jurisprudence of the Supreme Court (SSTS of 23.5.97, 15.04.98, 28.12.99, 10.01.00, 28.07.01, 29.09.01, 10.02.03, 14.04.03, 19.12.03, 23.12.03, 25.02.04 and 19.01.05 (among others) requires the concurrence of an essential normative element, which is the determination of the criminal origin with respect to the assets that are the subject of the operation, demonstration that can be based on indirect or presumptive evidence, consisting of the accreditation of a sound relationship or connection with criminal activities (in the specific case with drug trafficking). In all the processes carried out up till now, as has been stated in the previous sections, there are no objective data that may allow for minimally considering as well founded the charge made with regard to the criminal origin of the assets used for such operations, which circumstance leads us to the absolute lack of evidence in the case of writs with respect to one of the inexcusable elements that comprise the moneylaundering offense, provided in art. 301 of the Penal Code. Accordingly, in view of the reasons stated in the previous sections and bearing in mind the current status of the investigation (where there are necessarily no new processes), it is appropriate in accordance with the provisions of art. 779.1.1 of the Law on Criminal Proceedings to grant temporary stay of proceedings as stipulated in art. 641.1 of the criminal procedural law, since the existence of punishable facts which has been the purpose of the investigation has not been sufficiently proven or justified.”