

Defense of my name in front of a great injustice

Previous Procedures Abbreviated Proceeding 161/2000 D

TO THE FIRST INSTANCE CRIMINAL COURT No. 5

I, MR. MARCO AURELIO ROYO ANAYA, Colombian citizen with identity card No. 9.049.399 of Cartagena and domicile at 845 United Nations plaza, apartment 52-C 10017 New York (UNITED STATES) appear before the Court and as may be most appropriate according to law, respectfully **SAY**:

FIRST: I recently became aware through news published in the Spanish press and reproductions thereof made in the Colombian press, of the Proceedings in which, among other issues, an investigation is being made of the operation involving the acquisition of Banco Ganadero de Colombia by Banco Bilbao Vizcaya Argentaria (hereinafter BBVA).

I am a decent, respectable and honest citizen who has never been condemned or prosecuted by the Colombian or Spanish justice and that is why in defense of my good name and since my desire is no other but to collaborate with the Spanish justice, I hereby wish to clarify all the details relative to the LICIT, LEGAL AND FULLY CONTROLLED BY THE COMPETENT AUTHORITIES, OPERATION OF ACQUISITION BY BVVA OF A GREAT PART OF THE STOCK OF BANCO GANADERO DE COLOMBIA, as well as **VOLUNTARILY PLACE MYSELF AT YOUR HONOR'S DISPOSAL** to provide the deposition you may request in order to clarify any doubt there may be regarding the aspects related to the legal banking operation that concerns us.

Likewise, I can inform on behalf of my partner and friend, Mr. Enrique Gerlain Echevarría and Messrs. José Ramón García de Paredes and Mr. Andrés Cardona Restrepo who are also willing to **appear before Your Honor voluntarily without the need to wait for the sending of the letters rogatory** in order to declare and explain whatever questions Your Honor may wish to be clarified and declared.

Before beginning the explanation of the facts and as first evidence of my absolute willingness to collaborate with Justice to prove the total legality of the operation for acquiring Banco Ganadero, I am attaching to this writ as **Document No. 1**, a copy of the order which last week I sent to BBVA to **release the bank secrecy of the totality of my accounts** in the entity in Spain, as well as in any other part of the world, in order to absolutely facilitate all the information which this or any other Court may require with respect to them.

SECOND: Acquisition by me and by corporations in which I am a partner of stock of Banco Ganadero de Colombia:

Having expressed the above, I will now proceed to explain in full detail the acquisition operation and subsequent transaction of stock from Banco Ganadero de Colombia.

I am attaching as **Document No. 2**, in spite of explaining again in this document, a significant part of the items contained therein, a writ with background information on the operation of acquisition of stock of Banco Ganadero and BBVA.

First of all and as starting point; **I must highlight that total impossibility of existence of a money laundering mechanism is evidenced by the mere and overwhelming fact that in all the operations and transactions which I will describe below there have been no funds contributed by me or by my partner Mr. Guerlain or any of the corporations that have participated therein, but rather absolutely everything has been financed through banking loans and subsequent negotiation of the stock.**

Thus, the first acquisition of stock from Banco Ganadero de Colombia by me and by another large number of individuals and corporations headed by Mr. Gerlain and myself, by a simple matter of reputation and credibility in the Colombia economic entrepreneurial world occurs in 1994 when, as members of the FIDUGAN trust company we obtained a loan for 115 million dollars which is granted us by the Dutch banking entity, ING Bank for the acquisition of stock of Banco Ganadero. Such loan was guaranteed through the pledging in favor of ING, of the same stock of Banco Ganadero acquired with the money obtained from the loan.

Attached as **Document No. 3** is a photocopy of the loan contract with ING.

At this point I wish to highlight that **the use of corporations of which I, or my partners are owners for the acquisition, management or holding of the stock that was purchased, is absolutely not due to obscure or illegal purposes that may endeavor to involve some type of fraud, but is rather a simple matter of personal security.**

As I am sure the honorable Court to which I am addressing myself is aware and sensitive to the fact that the security situation in my country, Colombia, unfortunately is very deteriorated, for which reason all those who have a moderately high net worth are forced not to directly appear as holders thereof, since this automatically implies becoming a potential objective of extortion, kidnapping or even murder, that is why **in a completely legal manner foreign corporations are used (use allowed and protected by Colombian legislation) for carrying out certain operations** or holding certain rights, thus avoiding that one's net worth may be of public knowledge.

For the same purposes, that is, to acquire stock from Banco Ganadero de Colombia, and with identical mechanisms as in the previous loan, the corporation Inversiones Eléctricas, S.A., requests a loan from Banco Ganadero de Panamá, in the amount of 30 million dollars, on June 21, 1996 with Muhleberg Holding, S.A., and Grendel Inc., (companies belonging to Mr. Gerlain and myself) being the guarantors.

Attached as **Document No. 4** is a photocopy of the loan contract signed with Banco Ganadero de Panamá.

Subsequently, on December 22, 1997, Muhlberg Holding signs an overdraft contract with Banco Ganadero up to the amount of 23 million dollars.

Attached as **Document No. 5** is a copy of the overdraft contract.

As in the previous cases, on June 25, 1997, the corporation Muhleberg Holding, S.A., company of which I am stockholder, signs another loan with Banco Santander in the amount of 13 million dollars, guaranteeing compliance with the obligations derived from the loan, through the pledging of the stock that were going to be bought with the money originating from the aforementioned loan.

Attached as **Document No. 6** is a photocopy of the aforementioned loan contract.

In sum, starting in 1994, a very large group of stockholders headed by Mr. Enrique Gerlain and myself purchased a package of stock from Banco Ganadero de Colombia which represented approximately 25% of said Bank's capital stock. The aforementioned acquisition was made from a group of Venezuelan corporations that were the holders of said stock and was concluded at the Bogota Stock Exchange with the pertinent controls and sanctions on the part of the competent authorities responsible for such matters in Colombia: the Superintendency of Securities and Banco de la República.

THIRD: Exchange of our stock from Banco Ganadero for BBVA stock:

In 1998, BBVA shows its interest in licitly and legally acquiring Banco Ganadero de Colombia and thus, in keeping with the appropriate trading practices, makes a public offer for the exchange of stock from Banco Ganadero de Colombia for BBVA stock.

Attached as **Document No. 7** is a copy of the public offer made by BBVA.

I, along with a group of stockholders from Banco Ganadero that were grouped in FIDUGAN, **participated in the public offer for the exchange of stock, for which purpose**, as had been agreed in the loan contract, **we obtained authorization** from ING, Banco Ganadero de Panama and Banco de Santander **to release the stock** that served as guaranty of the loans for the sole purpose exchanging them for BBVA stock, immediately pledging the latter in favor of the banking entities in substitution of the stock from Banco Ganadero which until then guaranteed the loans.

I attach as **Document No. 8**, letter from ING Bank authorizing the release of the stock from Banco Ganadero, S.A., to participate in the exchange in favor of one of the corporations, Grendel, Inc., (I have requested copy of the authorizations relative to the release of the rest of the stock and if required by Your Honor, they will be gladly submitted).

The transaction and exchange of stock from Banco Ganadero for BBVA stock was concluded at the Bogota Stock Exchange with the authorizations from Banco de España, the U.S. SEC, the Securities Superintendency of Colombia and Banco de la República (Central Bank of Colombia).

In this way BBVA takes over control of the majority of stock of Banco Ganadero de Colombia in a public, legal manner, precisely abiding by the legal rules and control of the official bodies of the different states and accordingly, some of the stockholders of Banco Ganadero become stockholders of BBVA, by pledging our stock, as I have already explained, in favor of ING, Banco Ganadero de Panamá and Banco Santander.

In addition, as evidence of the absolute legality I have observed in the operations described, in 1998 I proceeded to voluntarily register the personal investment I made through the exchange stock in the Registry of Colombian Investments Abroad, as well as to declare in my income tax return the aforementioned BBVA stock which I acquired as a result of the exchange.

I attach as **Documents Nos. 9 and 10**, copies of the aforementioned registry of investment and my 1998 income tax return.

FOURTH: Signing of a new loan with BBV Puerto Rico (BBV International Investment Corp.) for the payment of the previously mentioned loans.

After concluding the exchange of stock my partners and I decided to group the loans that were still pending into a single one for merely economic-financial reasons and greater ease in the administration and compliance therewith.

Thus, **we requested a loan in the name of the corporations Muhleberg Holding, S.A. Panamá, Grendel Inc., Panamá, Vic International Company, S.A. Panamá, Musso Development, S.A., Panamá and Icotea, S.A., (Colombia) to BBV Puerto Rico in the amount of 94.5 million dollars** in order to pay off the pending loans with ING, Banco Ganadero de Panamá and Banco Santander.

All of these corporations were part of the FIDUGAN Trust and belong to Mr. Gerlain and myself, except for VIC. INTERNATIONAL COMPANY, which is a corporation owned by Mr. Guillermo Gómez Galofre, respected, irreproachable person known in the Colombian society, who was also one of the partners in the operation.

BBV Puerto Rico granted us the loan and the contract is signed on July 9, 1998, which contract is protocolised and "officialized" under notary, by Mr. Nelson Rodríguez González.

I attach as **Document No. 11** a photocopy of the aforementioned loan contract of July 9, 1998.

This contract which is signed on July 9, 1998, **is subject at the time of its signing of some minor written corrections** which do not absolutely affect the essence of the contract, **for which reason such corrections are included in a new text of the contract** which is again signed on August 7, 1998.

I attach as **Document No. 12** a photocopy of the definitive loan contract dated August 7, 1998.

Likewise, **a second nominative credit is signed on August 7, 1998, in my favor, for the amount of 5.5 million dollars** for the same purpose and object as that granted to the corporations, although it is to be noted that the aforementioned credit that continues in force to this date and until the year 2005, was not used, since the funds obtained from the loan granted to the corporations allowed for paying off all the pending obligations with ING and Banco Santander, for which reason the debit balance of this latter loan is, to this date, and has always been zero dollars.

I attach as **Document No. 13** a photocopy of the loan contract.

It may be observed in the clauses of the loan contract how the mechanism used for guaranteeing the credit granted is practically identical to that used with IGN and Banco Santander; that is, the BBVA stock of which we were holders are pledged in favor of BBVA Puerto Rico.

To this end, the stock is physically deposited at BBVA Privanza in Switzerland, banking entity which assumes their custody and guarantees to BBVA Puerto Rico the pledging of the stock.

With these amounts of money the borrowing corporations proceed to fully pay off the credits with ING Bank, Banco Ganadero de Panamá, Banco Santander and acquire more stock from BBVA which are equally pledged.

FIFTH: Establishment of sales options (PUT) on pledged stock and their subsequent sale at the Madrid Stock Exchange.

In the loan contracts signed with BBVA Puerto Rico, the existence of some sales options (PUT options) are agreed on part of the pledged stock in favor of the borrowers, and thus they are authorized to sell the stock in case their value in the market would increase, with the money obtained therefrom, becoming the guarantee of the loan in substitution of the stock.

In October 1998, given the appropriate moment for selling the stock, we decided to give the order to exercise the PUT option on the stock that had so been considered and the sale takes place publicly and through the normal and regular procedure at the Stock Exchange of Madrid on October 16, 1998.

Attached as **Document No. 14** is a copy of the letter dated October 6, 1998, as evidence of the order given to sell the stock.

Following the sale of the stock, the Stock Exchange of Madrid, transfers directly to BBVA Privanza in Switzerland, without the undersigned or any other person having access to the money, the amounts resulting from the sale thereof, with the aforementioned amounts being deposited at BBVA Privanza as guarantee in favor of BBVA Puerto Rico for the loans signed.

On October 16, 1998, an order is issued to BBVA Privanza in Switzerland so that on October 21 it may proceed to pay to BBVA Puerto Rico, from the amount deposited, originating from the sale of the stock, part of the loan acquired.

I attach as **Document No. 15**, a copy of the aforementioned letter dated October 16, 1998, signed by Marco Aurelio Royo Anaya.

Likewise, and as had been agreed, part of the money obtained from the PUT of the stock is used to acquire new stock from BBVA which is also pledged. I attach as **Documents Nos. 16, 17, and 18**, justifications of the purchase of the stock on behalf of Muhleberg Holding.

SIXTH: Payment and settlement of the total debt with BBV Puerto Rico (BBV International Investment Corp.) through an “equity swap” contract with Merrill Lynch:

Having paid a greater part of the loan we had with BBVA Puerto Rico with the money obtained from the sale of stock, we proceeded to sign on September 25, 2001, a last "equity swap" contract with Merrill Lynch and thus the latter proceeded to purchase in the stock exchange, the stock remaining in deposit in Switzerland, from BBVA Privanza and BBVA Privanza paid off, along with a small difference that was contributed by us, the remainder of the loan with BBVA International Investment in Puerto Rico.

I attach as **Document No. 19**, a photocopy of the contract signed with Merrill Lynch.

The reason why this contract is signed is simple and easily understandable and that is because BBVA Puerto Rico had been applying a 2% annual interest, while a 1.25% rate of interest was agreed with Merrill Lynch, which implied a considerable improvement in conditions.

SEVENTH: Documentary rebuttal of another series of false statements:

I allow myself to provide herewith, a whole series of certifications aimed at nullifying and proving the falsity of a series of statements that have appeared in the Spanish press, as well, as I understand have been partially compiled by the District Attorney from these proceedings, relative to the existence of transfers of large amounts of money which allegedly I had transferred or deposited in different banking accounts.

In this respect, I believe I should be allowed, for a complete defense of my honor and to clarify any doubt there may exist in relation to the operations described herein or regarding myself, a whole series of certifications which I attach as **Documents Nos. 20, 21, 22, 23, 24, 25, 26 and 27** which deny the existence of the aforementioned transfers and even the existence of banking accounts in my name in several of the banking entities.

EIGHTH: Nonexistence of any relationship between the undersigned and Mr. Víctor Carranza.

Lastly, and in defense of my good name and that of my family, I wish to deny, given the information appearing in several news media, the fact that Marco Aurelio Royo Anaya has no personal or business relationship with Mr. Víctor Carranza.

These statements are false, because I have never met Mr. Carranza, or known him, or had any type of relationship, or much less had any business dealings with him.

To this effect, I attach as **documents Nos. 28 and 29** certifications from the legal representatives of BBVA FIDUCIARIA, S.A., which certify, among other issues, that Mr. Víctor Carranza has never been part of FIDUGAN, or appears as a stockholder thereof, or has had commercial relationships with the trust.

Likewise, I designate all the Commercial and Public Registries of Colombia, Panama, Spain, Puerto Rico or any other country in order that it be verified that there is no evidence or proof that the undersigned Marco Aurelio Royo Anaya has had any commercial or corporate relationship with Mr. Víctor Carranza.

NINTH: Lastly, I wish to state that it has not been materially possible for me to grant general power of attorney in favor of an Attorney, for which reason I currently formally lack procedural representation; nevertheless, the Court to which I have the honor of addressing myself may contact me, or transmit any resolution it might wish to deliver to me, through my attorneys in Madrid, Mr. FERNANDO MUÑOZ-CAMPOS (Ltdo. 19.340) and Mr. ENRIQUE LUZÓN CAMPOS (LTDO. 70.187) with professional offices at C/ Alberto Aguilera No.62, esc. Dcha 4º 2 (28015 MADRID) Telephones: 91 5437600 and 91 5438059, Fax: 91 5447347, or through my attorney in the city of Barcelona Mr. SANTIAGO MIR PUIG C/ Travesera de las Cortes 268 esc. A 10º 08014, BARCELONA.

For all that has been stated,

I REQUEST TO THE COURT that having presented this writ together with the accompanying documentation, that it be admitted, that its contents be considered as reproduced and that the foregoing statements be considered made for the pertinent purposes.

In Madrid, on April 30, 2002

Marco Aurelio Royo Anaya

Sgd. Marco Aurelio Royo Anaya