

Legal Case against Súmate- Summary

1. On his February 15th, 2004 TV Program "Alo Presidente", the President of Venezuela, Hugo Chavez accused the non-governmental organization Súmate of the crimes of "conspiracy and treason". This serious accusation found immediate echo on other public officials who proffered insults and threats on state owned media.
2. On March 4th, 2004, and based on those accusations the 6th National Attorney opened an investigation against the NGO Súmate and some of its members: María Corina Machado, Alejandro Plaz, Luis Enrique Palacios and Ricardo Estévez, for the alleged crime of conspiracy.
3. The acts for which they were being accused of conspiracy were educational activities: workshops on democratic principles and citizen's rights, and television and radio ads, which were designed to divulge the mechanisms established in the Constitution for political and civic participation. They were also charged for having received a grant from the *National Endowment for Democracy* (NED), institution that according to the prosecution depends on the United States' State Department, and acts according to instructions from the Central Intelligence Agency (CIA) of that country.
4. Neither the Venezuelan Constitution, nor Venezuelan laws prohibit receiving funds from foreign agencies. On the other hand, the acts for which they were being denounced had not been established in any law as a crime, so it is clearly evident that the charges violate the Principle of Legality.
5. The crime of conspiracy supposes an attempt to destroy the republican form of the State. Paradoxically, SÚMATE's activities and that of its members have been directed towards promoting and encouraging the full exercise of the political rights established in the Constitution, and the alternability of its leaders.
6. The investigation was conducted in a highly irregular manner. The accused were not permitted to be assisted by an attorney when they made their first statements in the case.
7. The Office of the Attorney General and the Court did not carry out the evidentiary proceedings requested by the defense: they never took statements from the board and members of the National Endowment for Democracy, even if according to the plaintiffs they provided the money for the alleged conspiracy. It should be pointed out that on November 16th, 2004; the Criminal Court of the Supreme Court of Justice ordered that the testimonies be taken as anticipatory evidence.
8. The preliminary hearing could no be held until the evidence was not furnished. In an evident instance of contempt for the Supreme Court decision, the preliminary hearing was set for the June 10th, 2005. On

- that opportunity the Control Judge would decide if there were merits to prosecute SÚMATE's members and of the relevance of the measures taken against them. The judge deferred the hearing on two opportunities.
9. On July 5, 2005, the date on which the hearing was finally set, the 6th National Attorney brought the accusation of conspiracy before the 41st Jurisdictional Court against María Corina Machado, Alejandro Plaz, Luis Enrique Palacios, and Ricardo Estevez. The first two were charged as authors, the latter as unnecessary accomplices.
 10. During the preliminary hearing, the Public Prosecutor reiterated that the educational activities aforementioned with financing from the NED constitute a clear foreign intervention in Venezuelan politics. The prosecutor also brought forth the evidence that would be offered at trial. They were admitted in their entirety, even if some were manifestly irrelevant to the process. Finally, the prosecution requested a warrant for the preventive incarceration against María Corina Machado and Alejandro Plaz, and also a precautionary measure against leaving the country with periodic presentation before the court for Ricardo Estevez and Luis Enrique Palacios.
 11. The defense presented:
 - a) A request to declare the process null and void based on the violation of due process. SÚMATE members were investigated without their knowledge, they were denied all the evidentiary proceedings solicited, and because the acts for which they were being investigated do not constitute a crime according to Venezuelan legislation.
 - b) Exceptions to the criminal procedures based on the fact that the object of the accusation does not have penal character, and on the failure to fulfill the necessary formalities of the accusation.
 - c) Evidences that would be introduced at trial were not admitted.
 - d) Request that the accused be tried in freedom as ordered by the Supreme Court of Justice in its decision of November 16th of 2004. Also because there were not elements in the case which justified their being remanded into custody.
 12. At the end of the presentation by both parts the Judge declared the end of the hearing, deferring the decision for the next day (July 7th, 2004).
 13. In the decision the judge admitted the charges presented, and declared they would proceed to trial, having disregarded the request to nullify the investigation. The judge established that there were enough elements of conviction which permit to typify the conduct of the accused according to Article 132 (single section, first part), and that the accusation fulfilled the formal obligations required by the Penal Code. All the evidence promoted by the prosecution was accepted,

- while all the evidence promoted by the defense was denied. According to the judge its pertinence and necessity were not established. In the specific case of the evidence obtained in anticipation, only certain witnesses were accepted. In addition they were never obtained, even though the Penal Code establishes that it is the Control Judge and not the Trial Judge is responsible for their collection. On the other hand the request by the Attorney General's Office that the accused be remanded into custody was denied since the Supreme Court of Justice ruled that they should be tried in freedom.
14. The case file was sent to the Seventh Trial Court so the oral fase of the trial could begin. It should take place in the presence of a mixed court with judge and jury. Nevertheless the court was not constituted according the established in the legislation. On November 2nd, 2005 the court ordered the constitution of a unipersonal court (only the judge, no jury). The oral and public fase of the trial was set to begin on December 6th.
 15. The Seventh Trial Court announced measures restricting the freedom of the members of SÚMATE, without them having been solicited by the prosecution. This violated the ruling by the Penal Court of the Supreme Court of Justice, and of the 41st Control Court that ordered that they should be tried in freedom, considering their disposition to submit themselves to trial.
 16. The defense introduced motions against both decisions, the one regarding the composition of the court, and the other restricting the accused freedom. They were resolved by a ruling on November 15th, 2005 which denied the first, and declared void the latter.
 17. María Corina Machado's defense appealed the constitution of a court without jury; there has not been a decision yet.
 18. On November 29th, 2005, Ricardo Estévez' defense introduced an appeal for legal protection based on the violation of due process. It referred specifically to the guarantee to be tried by your natural judge, and to the illegal constitution of a court without jury. On November 30th, 2005, the Court of Appeals solicited the case file. The 7th Trial Court, however, did not forward it opportunely.
 19. The hearing to begin the oral and public fase of the trial was set for Tuesday November 6th, but the 7th Trial Court did not hold court on either Nov 2nd, or on Nov. 5th which delayed de forwarding of the case file to the First Court of Appeals.
 20. Furthermore, and as a consequence of the above, the sending of the appeal motion against the Nov. 15th decision on the constitution of the court was also delayed.
 21. On December 5th, 2005, the defense introduced a motion to recuse the Judge of the 7th Trial Court, Elías Álvarez, based on Article 86 of the Penal Code.

22. Even though he had not remitted the case file to the First Court of Appeals, nor processed the appeal motion, the 7th Court Judge expected to commence the oral trial set for that day. At the moment of verification of the presence of all parties involved, the absence of Luis Enrique Palacios and his defense was noted. The prosecution then requested a postponement of the hearing and new citations be written to set another trial date. It also noted that although the process should not stop, there were several defense motions pending that should be decided by a different court.
23. The 7th Trial Judge ruled on the absence of Luis Enrique Palacios. He ordered the Direction of Intelligence and Prevention Services (DISIP in Spanish) to locate and transport Palacios to the court for an explanation of his absence. The recusal was declared inadmissible without a given motivation.
24. The oral trial was postponed to January 8th, 2006.
25. The trial date was deferred once more to January 24th, 2006
26. On January 23rd, the 7th Trial Court ruled on the recusal against him, this time he declared it inadmissible since his court was not the court administering the case. By then the procedural acts were on the 6th Court of Appeals.
27. The hearing was postponed once again on January 24th, 2006 and set for February 7th. On this opportunity the case file was not physically on the 7th Trial Court.
28. On Friday, February 3rd, Alejandro Plaz' defense introduced a new appeal motion against the decision that declared inadmissible the recusal presented against Judge Elías Álvarez.
29. On Tuesday, February 7th, 2006, in spite of the fact that there had not been a ruling on any of the appeals pending -over the constitution of the court or over the inadmissibility of the recusal against him- Judge Elías Álvarez ordered the start of the oral debate.

As a consequence of the absence of Luis Enrique Palacios, Judge Elías Álvarez, without a request from the prosecution, ordered the incarceration of Palacios, and severed his cause from the other defendants.

The District Attorney ratified the accusation, and in obvious contempt for the Supreme Court's ruling reiterated its request for Alejandro Plaz and María Corina Machado to be remanded into custody while the trial is being held.