



UNIVERSIDAD
DE LOS ANDES
VENEZUELA



ula
Observatorio
de Derechos
Humanos

CEPIKEIA
OBSERVATORIO UNIVERSITARIO DE
DERECHOS HUMANOS

MÉRIDA FIREFIGHTERS

Violation of freedom of expression,
due process and judicial impartiality

Mérida Firefighter: Violation of freedom of expression, due process and judicial impartiality

On September 12th, 2018, around 23:00 hrs, Carlos Julio Varón and Ricardo Prieto Parra, officers of the Mérida State Fire Department, were arbitrarily arrested without being in flagrante delicto nor the existence of any Court warrant, while they were working at the headquarters of the Apartaderos Fire Department in Mérida, Venezuela¹.

The reason for this arrest was the dissemination in social networks of a video in which a donkey could be seen walking through the facilities of Apartaderos Fire Department. In the video, the firefighters were talking to this animal as if it were Nicolas Maduro, leader of Venezuelan regime. Firefighters filed complaints to the donkey regarding the critical situation of Apartaderos Fire Department, both as a joke, and as claim for help to the National Executive².

The officials who carried out the arrest belong to the General Directorate of Military Counterintelligence (DGCIM, by its acronym in Spanish), an organ attached to the Ministry of Defense, with powers in intelligence and enemy espionage to guarantee the security and defense of the Nation.³ Immediately after the arrest, firefighters were transferred to the headquarters of the DGCIM, where they remained in detention until September 21st, 2018. It must be noted that the DGCIM headquarters does not have a place of confinement, and its facilities do not meet minimum standards⁴.

On September 14th, 2018, their hearing was deferred, and postponed until September 16th, 2018.

Although they were not arrested in flagrante delicto, the flagrante hearing took place on Sunday, September 16th, 2018, before the Judge of Control No. 2 of Mérida State Judicial Criminal Circuit, Carlos Márquez Vielma. The Organic Code of Criminal Procedure⁵ and the National Constitution establish a maximum of 48 hours for the presentation of detainees before the judge. However Carlos Varón and Ricardo Prieto were presented more than 24 hours later than established by Law.

Law against Hatred: an illegal tool to intimidate population

The Public Ministry, under the prosecutor Silvio Villegas, charged on September 16th 2018, the crime of promotion and instigation of aggravated hatred, with a prison sentence of 20 years, according to articles 20 and 21 of the Law against Hatred for Peaceful Coexistence and Tolerance.

The control judge, lawyer Carlos Márquez Vielma, accepted the request of the Public

¹ <http://www.uladdhh.org.ve/index.php/2018/09/18/odh-ula-reitera-caracter-inconstitucional-de-la-ley-contra-el-odio-y-pide-liberacion-de-efectivos-bomberiles/>

² <https://twitter.com/ntn24ve/status/1040581759132487680?lang=kn>

³ <http://www.dgim.mil.ve>

⁵ In Spanish: Código Orgánico del Proceso Penal

Prosecutor's Office, pre-qualifying the crime of promotion and instigation of aggravated hatred, which contemplates a 20 years penalty in prison.

The Law against Hatred for Peaceful Coexistence and Tolerance, promulgated by the illegitimate National Constituent Assembly on November 8th, 2017, was rejected by the independent Human Rights Organizations of Venezuela, for being a clear human rights violation, and a mechanism for criminalize freedom of expression as well⁶. The Inter-American Commission on Human Rights Special Rapporteur on Freedom of Expression considered the so-called Law against Hatred as alarming, and dangerous to democracy⁷.

On Friday, September 21st 2019, the arrested firefighters were taken to the Bailadores Police Coordination Center, in the Municipality of Rivas Dávila, Merida State, 91 kilometers away from the city of Mérida, where they remained in custody until October 31st.⁸ On October 15th, more than 50 Venezuelan Human Rights Organizations demanded the full release of the detainees.⁹

On October 30th 2018, after 48 days illegally detained, the Prosecutor of the Public Prosecutor's Office, Yohama Alviarez requests the Second Court of Control to set a hearing date to set a change in the classification of the crime.

On October 31st 2018, the Hearing was held to change the classification of the crime and two new offenses were charged: 1. Vilification to the President of the Republic and 2. Aggravated Public Instigation, both contained in Penal Code with penalties up to 9 years in prison. They were left out of prison on parole, consisting of presentation before the Mérida Criminal Judicial Circuit every 30 days, and prohibition of exit not only from the country, but also from the State of Mérida, as well as prohibition of giving public press conferences or declarations.

Censorship practices and restriction of freedom of expression in the context of the detention of firefighters Carlos Julio Varón and Ricardo Prieto

The arrest of firefighters Carlos Julio Varón and Ricardo Prieto for broadcasting a satirical video with the aim of denouncing the current critical situation of Fire Department violates freedom of expression and criminalizes protest. However, the practice of censor extends to other firefighters and journalists, as we point out below:

On September 14th 2018, the scheduled date for Hearing¹⁰ of the arrested firefighters, Ricardo Prieto and Carlos Varón, a group of seven firefighters presented themselves at the headquarters of State of Merida Judicial Criminal Circuit to express their solidarity with the

⁶ <http://espaciopublico.org/la-ley-odio-ilegitima-forma-fondo-origen>

⁷ <https://www.efe.com/efe/america/politica/el-relator-de-la-cidh-considera-alarmante-ley-contra-odio-venezuela/2000035-3433789>
<https://www.elespectador.com/noticias/el-mundo/con-la-ley-contra-el-odio-venezuela-sera-un-estado-absolutamente-totalitario-articulo-722362>

⁸ <http://www.uladdhh.org.ve/index.php/2018/09/22/bomberos-de-merida-fueron-trasladados-a-reten-policial-de-bailadores/>

⁹ Véase: <http://www.uladdhh.org.ve/index.php/2018/10/15/51-organizaciones-de-derechos-humanos-exigen-sobreseimiento-de-la-causa-de-los-bomberos-de-merida/>

¹⁰ Hearing postponed by the control judge, and held on Sunday, September 16.

detained comrades, but they were dissuaded by the Commander of the Firemen, Major Alvis Aldana, who forced them to retire¹¹.

On September 18th, President Nicolás Maduro publicly insulted the journalist Esteban Rojas, of the Agence France-Presse, with the epithets of 'palangrista and asshole' when the journalist asked him, at an international press conference, his opinion on the arrest of the Mérida firefighters¹².

On September 19th, the Commander of the Fire Department Mrs. Alvis Aldana called a meeting at the headquarters of Mérida Fire Department, and verbally exhorted the firefighter officials: not to issue information through social networks where the institution is involved, ordering to ask for authorization from superiors, and follow the regular procedures in order to do it.

On September 20th 2018, the Second Sergeant of Firefighters, Nelson Enrique Márquez Cáceres, received notification from his immediate superior in which he received a written warning issued by spreading in Facebook and WhatsApp: “proselytizing content that promotes and encourages insubordination”¹³. In an interview conducted by firefighter Nelson Márquez, he said that he had just respectfully expressed on Facebook his demands on salary and the provision of units, materials and work equipment Fire Department needed¹⁴.

On September 25th 2018, the distinguished firefighter Gregorio Emilio Martínez Acosta received notification from his immediate superior, indicating that he was involved in a written warning, because he failed to comply with the orders and instructions given by the Fire Commander Alvis Aldana of ‘not to issue information through social networks where the institution is involved’, remembering him to ask for authorization from superiors, and follow the regular procedures in order to do so¹⁵.

On September 27th 2018, the ODH-ULA assisted Sergeant Nelson Márquez in the presentation of defense arguments, in relation to notification of written warning received on September 20th 2018¹⁶.

On September 28th 2018, the Fire Department General Inspector of Services¹⁷, Viloría Pabón, issued a statement to all the staff of State of Merida Fire Department entitled “On the responsibility of people to freely express their opinions”, communicated in which it is stated, bold and underlined, that **free expression involves responsibilities**, and in capitals, bold and underlined, indicates that “firefighters must obedience, subordination and respect for their superiors”. Firefighters have perceived this communication as a threat to the exercise of their freedom of expression, and as imposition of censor as well; especially, after the consequences

¹¹ Testimony of Iván Toro, lawyer of ODH ULA, who was in the place.

¹² See: @NicolasMaduroRE Tweet: <https://twitter.com/NicolasMaduroRE/status/1042162651613278214?s=08>

¹³ See: Anex 1.

¹⁴ Testimony of the firefighter before the ODH-ULA staff

¹⁵ Testimony of Sergeant Nelson Márquez to ODH-ULA lawyers (September, 24th 2018)

¹⁶ See: Anex 2

¹⁷ It should be noted that the Inspectorate is the body in charge of fire brigade disciplinary sanctions, according to art. 53 of Organic Law of the Fire Service; as well as the bodies of firemen, and civil emergency management.

faced by firemen Carlos Julio Varón and Ricardo Prieto by spreading in social networks satirical video that compares President Nicolás Maduro with a donkey¹⁸.

On September 28th, the State of Mérida Fire Department is intervened for 180 days by the Central Government, renewable for a further 90 days intervention. The intervening board is granted broad powers to: initiate and review disciplinary administrative procedures, officiate jurisdictional bodies in cases where there be evidence of irregular or criminal acts, reduce staff, remove and designate charges, as well as initiating **a retraining plan based on a medical, psycho-technical and physical evaluation of firefighters**¹⁹. It should be noted that this intervention has no other purpose than to intimidate and silence any other firefighter who wishes to express himself, and purging the Fire Department of dissidents of central government²⁰.

On October 2nd 2018, the ODH-ULA assists the Firemen Distinguished Gregorio Martínez, in the presentation of defense arguments in relation to the notification of written warning received on September 25th 2018.

On the violation of principles of impartiality and judicial independence in the actions of Judge Márquez Vielma

Judge Carlos Márquez Vielma was designed as provisional judge of the Mérida Criminal Judicial Circuit Second Court of Control, in March 2017. He stood out, during 2017, as one of the main judges in charge of prosecuting between 30 and 50 protesters; all of them, arbitrarily arrested during the riots in Mérida State, between April and October 2017²¹. His work was characterized by delaying the procedures for the materialization of precautionary bail measures, in order to keep detainees deprived of liberty as long as possible, postponing hearings, and qualifying crimes when the prosecution requested full freedom, because there were no elements to prove flagrante delicto²².

Although the National Constitution in Venezuela²³, the Organic Law of the Supreme Court of Justice and the Code of Ethics of the Judge prescribe the independence, objectivity and impartiality of judges' actions, prohibiting them from carrying out partisan political activism; Judge Carlos Márquez Vielma, in a public and notorious way, in the press and social networks²⁴, has violated these principles²⁵.

¹⁸ See: Anex 4.

¹⁹ Art. 6, numeral 19, and art 9 of Resolution 191 (September, 28th 2018), Ministry of Interior, Justice and Peace. Official Gazette number 41492. <http://www.ghm.com.ve/wp-content/uploads/2018/10/41492.pdf>

²⁰ See Official Gazette <http://www.ghm.com.ve/wp-content/uploads/2018/10/41492.pdf>

²¹ It should be noted that in the context of the 2017 protests in the state of Merida there were 16 deaths, 14 of which still remain unpunished.

²² Testimony of protesters' lawyers. See also: <http://actualidadygente.com/noticias-de-merida-venezuela/84645-profesores-ula-denuncian-ensanamiento-del-poder-judicial-en-contra-del-profesor-cuevas>

²³ Art 256 of the National Constitution of Venezuela.

²⁴ See especially: <https://www.aporrea.org/oposicion/a35687.html>

²⁵ <http://www.uladdhh.org.ve/index.php/2018/09/21/juez-que-imputa-a-bomberos-de-merida-se-define-comunista-y-hace-apologia-de-la-violencia/>

<http://talcualdigital.com/index.php/2018/09/21/juez-que-imputo-a-bomberos-de-merida-se-retrata-con-el-psuv-y-con-armas/>

In December 2017, he revoked his own decision to order the release of 77 people with precautionary measures, after allegedly receiving a phone call. As stated in the press, he claimed to be wrong; he apologized and said those people should continue in detention. The fact was widely reviewed in the press²⁶.

It is worrying that, in addition to its lack of independence, the apology it makes of violence and illegally armed pro-government groups, known in Venezuela as ‘collectives’, who have participated in repression of citizen demonstrations in the protests of 2014 and 2017 in Venezuela²⁷. He has been photographed carrying firearms in front of the headquarters of these armed groups, located in the Santa Juana Sector of Mérida.

<https://www.elimpulso.com/featured/juez-que-imputa-a-bomberos-de-merida-se-define-comunista-21sep>

<http://fronteradigital.com.ve/entrada/2484>

<https://www.lapatilla.com/2018/09/22/juez-que-imputa-a-bomberos-de-merida-se-define-comunista-y-hace-apologia-de-la-violencia/>

²⁶ <http://merida.valeranoticias.net/juez-revoca-su-propia-decision-luego-de-dictaminar-libertad-a-77-personas-presuntamente-implicadas-con-pornografia>

<https://meridadigital.com.ve/juez-en-merida-revoco-su-propia-decision-y-volvio-a-encarcelar-a-77-personas-por-cargos-de-pornografia/>

<http://www.caraotadigital.net/regionales/juez-en-merida-revoco-su-propia-sentencia-tras-liberar-a-77-personas-por-cargos-de-pornografia/>

²⁷ <http://efectococuyo.com/principales/informe-de-onu-senala-a-colectivos-armados-por-causar-31-muertes-en-las-protestas/>



UNIVERSIDAD
DE LOS ANDES
VENEZUELA

www.uladdhh.org.ve



Av. Alberto Carnevali
Núcleo Universitario Pedro Rincón Gutiérrez
Entrada estacionamiento Facultad de Arquitectura y Diseño.
La Hechicera

 odhula@gmail.com

   @uladdhh