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## Ecuador

### EC/68 - José Cléver Jiménez Cabrera

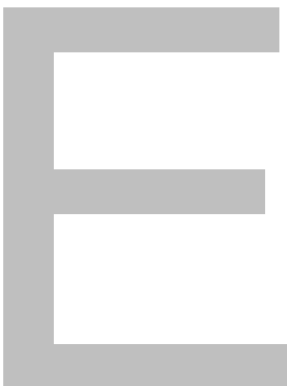
*Decision adopted unanimously by the IPU Governing Council at its 199<sup>th</sup> session (Geneva, 27 October 2016)*

The Governing Council of the Inter-Parliamentary Union,

*Referring* to the case of Mr. José Cléver Jiménez, a former member of the National Assembly of Ecuador, which has been examined by the Committee on the Human Rights of Parliamentarians pursuant to the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices),

*Considering* the following information on file as presented by the complainant:

- Following a complaint filed in August 2011 by President Rafael Correa, Mr. Jiménez, together with adviser and journalist Fernando Alcibíades Villavicencio and union leader Carlos Eduardo Figueroa, was prosecuted for criminal judicial defamation against the President;
- The defamation case stems from a complaint filed in 2011 by Mr. Jiménez, Mr. Villavicencio and Mr. Figueroa before the Public Prosecutor, claiming that on 30 September 2010 President Rafael Correa had allegedly committed crimes against humanity, as well as other offences under the Ecuadorian Criminal Code, such as inciting political chaos and civil discord. It should be noted that unrest broke out that day as police protested against cuts to their benefits. After Mr. Correa personally visited Quito's main barracks in an attempt to defuse the situation, the tension rose further, and he was forced to flee the scene and taken to hospital. He was besieged for 12 hours and declared a state of emergency, before finally escaping with the help of an elite squad. The complaint alleges that the President ordered that shots be fired during his escape and is responsible for what ensued that day;
- The National Court of Justice ordered the closing of the case, classifying the complaint as "malicious and reckless". Following these events, the President filed a complaint against the applicants for criminal judicial defamation;
- On 16 April 2013, the National Court of Justice convicted and sentenced Mr. Jiménez and Mr. Villavicencio to a year and a half of imprisonment and the payment of financial compensation equivalent to the monthly salary of President Rafael Correa, for each month since the date when the complaint was filed (August 2011) and the notification of the judgment. The Court ruled that the allegations of serious crimes against President Correa evidently lacked foundation, that they were made knowing their falsehood and with intent to cause harm to his reputation. The ruling provided that the defendants must offer a public apology to President Rafael Correa by print media, television and radio and publish an excerpt of the judgment in four media outlets, in addition to the payment of the President's attorney fees. On 24 July 2013, the National Court of Justice rejected the applications for annulment and appeal filed



by the defendants. The Court upheld the first-instance ruling, whereupon the applicants filed a cassation appeal. On 14 January 2014, the National Court of Justice rejected that appeal and upheld the decision. Mr. Jiménez and Mr. Villavicencio were never detained, as they went into hiding and were never found;

- The complainant states that Mr. Jiménez's prosecution is politically motivated and is due to the fact that he has denounced corruption as part of his oversight responsibilities and because he has expressed critical views against the President. According to the complainant, the proceedings were marred by lack of due process, in particular the failure to lift the parliamentary immunity and impediments to a fair trial, which would enable the accused to refute the charges against him,

*Considering* that, on 24 March 2014, the Inter-American Commission on Human Rights (IACHR) requested that precautionary measures be adopted for Mr. Villavicencio, Mr. Jiménez, and Mr. Figueroa, and requested the State of Ecuador to immediately suspend implementation of the 14 January 2014 decision issued by the National Court of Justice; and *bearing in mind* that, according to the complainant, the Ecuadorian Government has rejected the request because it believes that the IACHR lacks the power to issue such measures,

*Considering* that, on 5 May 2014, Mr. Jiménez presented a legal action before the Constitutional Court for non-observance of the IACHR precautionary measures, in conformity with Article 436.5 of the Ecuadorian Constitution and that, according to the complainant, this action is still pending,

*Considering* that, according to media reports, on 23 March 2015, judge Luis Enríquez of the National Court of Justice declared that the statute of limitations under recently adopted legislation put an end to the carrying out of the sentence and therefore ordered the police not to arrest Mr. Jiménez,

*Considering* that, the Committee received a new communication that affirms that Mr. Jiménez is currently facing charges of espionage, divulgation of secret information and attempting to stage a coup d'état, all of which allegedly relate to the same offences as those for which he was tried by the National Court of Justice in 2013. Moreover, the complainant reports that President Correa has initiated a new legal action to obtain financial compensation based on the sentence of 16 April 2013,

*Bearing in mind* that Ecuador is party to the International Covenant on Civil and Political Rights and, by virtue of articles 2, 9, 14, 19, 25 and 26 in particular, has committed to the requirement to respect and guarantee the fundamental rights of its citizens, including members of parliament, notably the rights to liberty, freedom of expression, the right to vote and to be elected in elections that ensure the free expression of the will of the electorate, the right to participate freely in the management of public affairs, the right to equality before the law, and the prohibition of all forms of discrimination and equitable and effective protection against all forms of discrimination, particularly with regard to political opinions; that the American Convention on Human Rights, to which Ecuador is also a signatory, includes similar provisions,

*Also bearing in mind* that Articles 11.3, 11.9 and 128 of the Ecuadorian Constitution stipulate that rights and guarantees established in the Constitution and in international human rights instruments will be of direct and immediate application, that the State will be responsible for arbitrary detention, unjustified delay or inadequate administration of justice, violation of the right to effective judicial protection, and violations of the principles and rules of due process, and that parliamentarians are not liable for opinions expressed in the exercise of their duties, within or outside parliament,

1. *Is deeply concerned* that Mr. Jiménez was convicted and sentenced for criminal judicial defamation against President Rafael Correa in connection with what appears to be the legitimate exercise of his rights to freedom of expression; *is unclear* as to the status of the application of the sentence in light of contradictory information; *wishes* therefore to receive official information, in particular relevant legal documentation as to whether the National Court of Justice did indeed consider the application of the sentence moot and, if so, whether this also means that the petition before the Constitutional Court for non-

observance of the IACHR precautionary measures is no longer pending, or whether to the contrary, President Correa's legal action means that the original sentence remains applicable;

2. *Notes with concern* the allegation that Mr. Jiménez is now subject to new criminal accusations in connection with the same facts that formed the basis of his conviction in 2013; *wishes* to receive clarifications from the relevant authorities in this regard, including copies of legal documents that would explain the facts and legal provisions underpinning such accusations, as well as the status of the legal action should it exist;
3. *Stresses* that reprisals against members of parliament for expressing their views, as part of their oversight responsibility, undermine their ability to exercise their parliamentary mandate and have a chilling effect on other parliamentarians and affect the ability of parliament as an institution to fulfil its role;
4. *Considers* therefore that the Parliament of Ecuador has a vested interest in using its powers to the fullest to help ensure that the concerns and questions regarding Mr. Jiménez are addressed; *wishes* to receive official information from the parliamentary authorities on any action that parliament has taken to this effect;
5. *Requests* the Secretary General to convey this decision to the competent authorities, the complainant and any third party likely to be in a position to supply relevant information;
6. *Requests* the Committee to continue examining this case and to report back to it in due course.