



Inter-Parliamentary Union

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Colombia

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 164th session (virtual session, 8 to 20 March 2021)



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COL-142 – Álvaro Araújo Castro

Alleged human rights violations

- ✓ Lack of fair trial proceedings
- ✓ Excessive delays
- ✓ Right of appeal

A. Summary of the case

Mr. Álvaro Araújo Castro was prosecuted on charges of aggravated criminal conspiracy and electoral fraud, accused of cooperating with paramilitary groups for electoral gain. Shortly after being charged, Mr. Araújo relinquished his seat in Colombia's Congress, as a result of which his case was transferred to the ordinary judicial system, under which he was investigated by the Prosecutor's Office and tried by an ordinary court, with the possibility of appeal. Mr. Araújo states that there was no evidence against him and that he was a victim of the confrontation between the Executive and the Supreme Court. He had expected the judge in the case to hand down a judgment by October 2009 and to acquit him. However, on 1 September 2009, the Supreme Court decided that cases regarding alleged links between parliamentarians and paramilitary groups should be investigated and tried by it alone. As a result, Mr. Araújo's case was transferred to the Supreme Court.

On 18 March 2010, the Supreme Court found Mr. Araújo guilty and sentenced him to a prison term of nine years and four months and a fine of 3,700 million Colombian pesos. The Court considered that Mr. Araújo was part of the hierarchical structure of the paramilitary forces in his region and ordered an investigation to be conducted into his possible involvement in the crimes committed by those groups.

Case COL-142

Colombia: Parliament affiliated to the IPU

Victim: Majority member of parliament

Qualified complainant(s): Section I.(1)(a) of the [Committee Procedure](#) (Annex I)

Submission of complaint: August 2009

Recent IPU decision: October 2015

IPU Mission: [October 2010](#)

Recent Committee hearing(s): - - -

Recent follow-up:

- Communication from the authorities: Letters from the Ministry of Foreign Affairs (October 2018) and the Secretary of the Criminal Chamber of the Supreme Court (September 2014)
- Communication from the complainant: March 2021
- Communication addressed to the authorities: Letter addressed to the President of the Colombian National Congress (January 2021)
- Communication addressed to the complainant: March 2021

In early February 2011, Mr. Araújo was conditionally released, having served three-fifths of his prison sentence.

Since the outcome of his trial, Mr. Araújo has become the subject of new investigations by the Supreme Court in relation to the alleged facts that underpinned his conviction in 2010. Most recently, in a letter dated 18 August 2020, he was informed by the Supreme Court that a new preliminary investigation had been opened against him in this regard.

Mr. Araújo has been actively pursuing his case before the Inter-American Commission on Human Rights since he submitted his petition in 2011, in which he sets out how he is the victim of multiple human rights abuses in relation to his trial.

Under the Colombian Constitution in force at the time of Mr. Araújo's conviction, members of the Colombian national Congress were investigated and sentenced in single instance by the Supreme Court, hence with no possibility of appeal. In its ruling C-545 of 2008, Colombia's Constitutional Court highlighted that this matter needed to be rectified in the Constitution to ensure respect for the right to a fair trial. Pending new legislation on this point, and in light of the ruling by the Constitutional Court, the Supreme Court decided to change its procedure so as to ensure that the same judges would not be in charge of the investigation and adjudication. In its ruling C-792 of 2014, the Constitutional Court reiterated the importance of providing for the possibility of appeal and the need for legislative steps in this regard. In early 2018, Legislative Act No. 01 (2018) entered into force whereby different chambers within the Supreme Court would be created to handle the investigation, the first-instance proceedings and the proceedings on appeal. On 20 May 2020, the Constitutional Court adopted ruling SU-146, in which it ruled that all persons convicted in single instance between 30 January 2014 and 17 January 2018, the entry into force of Legislative Act No. 01 (2018), would have the opportunity to take action in the following six months to appeal their sentences. The Constitutional Court referred to 30 January 2014 as the date on which the Inter-American Court of Human Rights had held, in the case of *Liakat Ali Alibux vs. Suriname*, that States were required to guarantee the right to appeal to those who were tried, given their position, by the highest national criminal court, pursuant to the Inter-American Convention on Human Rights.

The complainant has also repeatedly stated that the Supreme Court was biased against him and did not act with the necessary independence and integrity. It has pointed in this regard to decisions by the Supreme Court to discontinue subsequent investigations against several other parliamentarians who had admitted to having cooperated with paramilitary groups and who had been signatories to cooperation agreements with these groups, unlike in Mr. Araújo's case, in which such evidence and admission are absent. The complainant also points out that, in a recent case regarding a sitting senator who was also accused of cooperating with paramilitary groups, the Supreme Court reportedly raised the bar in terms of the evidence needed for the case to proceed and thereby deviated from the standard of proof it applied in Mr. Araújo's situation.

The complainant points out, furthermore, that the Supreme Court has been strongly discredited in recent years, as several members have been investigated since 2017 in the so-called "*cartel de la toga*" scandal, according to which certain Supreme Court judges and others in charge of criminal investigations against senior state officials were asking for bribes to alter the course of justice. In March 2021, a former president of the Supreme Court was convicted in the context of this scandal, in which former Supreme Court member, Mr. Leonidas Bustos, is also being investigated. Mr. Leonidas Bustos was in charge at the time of presenting Mr. Araújo's original case to the other members of the Supreme Court and allegedly insisted on his conviction, even though a lower investigative judge involved in preparing his file had pointed to the lack of evidence.

B. Decision

The Committee on the Human Rights of Parliamentarians

1. *Reaffirms its view* that Mr. Araújo was convicted in 2010 in legal proceedings that violated his right to a fair trial and in the absence of compelling, tangible and direct evidence to substantiate his conviction, on the grounds of complicity with the paramilitary forces, and on charges of aggravated criminal conspiracy and voter intimidation; *points out* in this regard that, on the contrary, events and statements show that there was clear hostility between Mr. Araújo and the paramilitary groups in his region;

2. *Expresses deep concern* that Mr. Araújo continues to be subject to new investigations with regard to the same accusations that led to his conviction in 2010, a situation that can only give weight to the long-standing allegation that he is the victim of judicial harassment;
3. *Deeply regrets* that Mr. Araújo has still not been afforded the opportunity to raise the serious doubts about his conviction in 2010 on appeal, which in itself runs counter to his basic right to a fair trial; *notes* in this regard that much progress has been made in Colombia in recent years to allow those convicted in single instance to appeal their sentences; *urges* the relevant authorities to do everything possible to offer this possibility to Mr. Araújo and to ensure that his case can be re-examined in a fully independent and impartial manner; and *wishes* to receive the authorities' observations on this point;
4. *Remains convinced* that, in addition, action by the Inter-American Commission on Human Rights is crucial to helping address the injustice suffered by Mr. Araújo; and *sincerely hopes* that the Commission will rule on his petition as soon as possible;
5. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
6. *Decides* to continue examining this case.