ECUADOR

- **ECU-COLL-01:** 2 parliamentarians
- **ECU-69:** Magali Orellana Marquínez (Ms.)
- **ECU-70:** Fernando Bustamante Ponce
- **ECU-71:** Lourdes Tiban (Ms.)

Ecuador

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 161st session (Geneva, 20–30 January 2020)

Jaime Ricaurte Hurtado González © MDP 2013

ECU-02 - Jaime Ricaurte Hurtado González
ECU-03 - Pablo Vicente Tapia Farinango

CASE ECU-COLL-01

Ecuador: Parliament affiliated to the IPU

Victim(s): Two opposition members of parliament

Complainant(s): Section I.1(d) of the Committee Procedure (Annex I)

Submission of complaint(s):
March 1999

Recent IPU decision(s) March 2014

IPU Mission(s): - - -

Recent Committee hearing(s):
Hearing with the General Coordinator of the Legal Advisory Service of the National Assembly during 161st session of the Committee (January 2020)

Recent follow-up:
- Communication from the authorities: Letter from the Speaker of the National Assembly (November 2019)
- Communication from the complainant: Complainant has been inactive
- Communication addressed to the authorities: Letter addressed to the Speaker of the National Assembly (November 2019)
- Communication addressed to the complainant: January 2019

Alleged human rights violations:

✓ Murder

A. Summary of the case:

Mr. Hurtado and Mr. Tapia were shot dead on 17 February 1999. A government-appointed monitoring commission (CEI) sharply criticized at the outset the conduct of the investigating authorities and the judicial proceedings. After protracted investigations, trial proceedings were opened in December 2004 against six suspects, two of whom have since been sentenced to a 16-year prison term, which they have served. Two other accused, Mr. Washington Aguirre and Mr. Gil Ayerve, were apprehended in the United States and Colombia in 2009 and 2010 respectively. Their arrests were intrinsically welcomed, but also because of the expectation that these individuals could lead the authorities to establish the identity of the masterminds of the murders.

In July 2010, the Colombian Supreme Court approved the extradition of Mr. Ayerve, which took place in December 2010. However, the Second Criminal Chamber of the National Court of Justice of Ecuador ruled in early November 2010 that the 10-year statute of limitations in the case had expired, thereby barring any criminal proceedings. In a resolution adopted at the end of the same month, the National Assembly of Ecuador strongly criticized the ruling, considering it contrary to Ecuadorian law, as political crimes were not subject to any statute of limitations. The lawyers for the deceased members of parliament likewise argued that the murder was a state crime/crime against humanity and that criminal proceedings could therefore take place at any time.

In March 2013, the other accused, Mr. Aguirre was apprehended in Italy, where he had gone after fleeing/leaving the United States. The Ecuadorian authorities subsequently requested his extradition. In March 2015, the National Assembly adopted a resolution asking the *Consejo Nacional de la Judicatura* (National Judiciary Council) to request that the judicial authorities take the necessary action in the case to avoid impunity, and that steps be taken through the Ministry of Foreign Affairs to proceed with Mr. Aguirre's extradition. In 2016, the Provincial Court of Pichincha dismissed Mr. Aguirre's objection that he could not be prosecuted for his alleged involvement in the assassination due to the statute of limitations. The court considered that the statute of limitations had been interrupted due to his being investigated for another crime, namely the possession of narcotic drugs. However, in April 2019, the judge of the *Unidad Judicial Penal* (Criminal Prosecution Unit) of Quito ruled that the statute of limitations had expired in this case and that it was therefore not possible to proceed with any related criminal proceedings against Mr. Aguirre.

B. Decision

The Committee on the Human Rights of Parliamentarians:

1. *Thanks* the General Coordinator of the Legal Advisory Service of the National Assembly, and through him the Speaker of the National Assembly, for the information provided at the hearing held on 21 January 2020;

2. *Deplores* that, more than 20 years after these high-profile murders were committed, some of the instigators have not been identified and brought to trial and that, due to the statute of limitations they, along with Mr. Ayerve and Mr. Aguirre, will never be held accountable in a court of law; and *considers* that this situation is largely due to the poor handling of the original investigation and to the insufficient focus on the work of the Commission of Inquiry, in particular the substantive leads it presented for an alternative line of inquiry to shed full light on the crime;

3. *Appreciates* that in the last 10 years the National Assembly has insisted publicly on several occasions on the importance of justice being fully rendered; *trusts* therefore that the National Assembly will continue to take an active interest in this case, all the more so as legal avenues are no longer available; *suggests* in this regard that the National Assembly explore the possibility of organizing an official public event to commemorate the murders and celebrate the lives of those killed; and *wishes* to be kept informed of any steps taken in this regard;

4. *Decides* to close the case in accordance with section 25(a) of Annex I of its Procedure for the examination and treatment of complaints, given that justice has been partly rendered in this case and that further crucial progress is no longer possible due to the statute of limitations;

5. *Requests* the Secretary General to convey this decision to the parliamentary authorities and the complainant.

Ecuador

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ECU-69 - Magali Orellana Marquínez

Alleged human rights violations:

- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Violation of freedom of opinion and expression
- ✓ Abusive application of parliamentary sanctions

CASE ECU-69

Ecuador: Parliament affiliated to the IPU

Victim(s): Former female opposition member of parliament

Qualified complainant(s): Section I.1(d) of the Committee Procedure (Annex I)

Submission of complaint(s): July 2016

Recent IPU decision(s): October 2016

IPU Mission(s): - - -

Recent Committee hearing(s):
Hearing with the General Coordinator of the Legal Advisory Service of the National Assembly during 161st session of the Committee (January 2020)

Recent follow-up:
- Communication from the authorities: Letter from the Speaker of the National Assembly (November 2019)
- Communication from the complainant: August 2016
- Communication addressed to the authorities: Letter addressed to the Speaker of the National Assembly (November 2019)
- Communication addressed to the complainant: December 2019

A. Summary of the case

Ms. Magali Orellana Marquínez, a former member of the National Assembly of Ecuador, faced disciplinary action in 2016 by the Council of Legislative Administration of the National Assembly (*Consejo de Administración Legislativa* – the CAL) for having requested the floor during a parliamentary debate. According to the complainant, this action affected the free exercise of Ms. Orellana's parliamentary mandate.

On 12 May 2016, during the plenary session of the National Assembly, Ms. Orellana was not allowed to intervene, despite the repeated requests she made through the electronic system and by raising her hand. According to the complainant, the then Speaker deliberately ignored Ms. Orellana's requests. At the end of the session, Ms. Orellana approached the podium and directly asked the Speaker why she had refused to give her the floor. According to the complainant, the Speaker refused to respond and asked security guards to remove Ms. Orellana from the room. The complainant affirms that Ms. Orellana was violently expelled from the chamber, while members of the ruling party, *Alianza Pais*, shouted insults at her. The scene was widely publicized on social media and the press.

According to the parliamentary authorities, the Speaker affirmed that Ms. Orellana had used aggressive and inappropriate language when she had approached the podium. The parliamentary authorities provided a video of the incident showing Ms. Orellana going up to the podium, wildly gesticulating and clearly upset. The video does not show what she said and if she was violently expelled from the chamber.

Following the incident, the CAL decided to suspend Ms. Orellana for 30 days without pay. The complainant states that there is a difference in treatment between members of the ruling party and opposition members; that there is no evidence of disciplinary action taken against members of *Alianza Pais* for similar incidents in the National Assembly; and that sanctions are only adopted against opposition members of parliament when they try to give an opinion that goes against the majority. In addition, the events described took place in the context of opposition members of parliament being systematically denied the right to speak at parliamentary debates. The complainant denounced the lack of impartiality of the CAL (which is presided over by the Speaker); the absence of effective national remedies to protect members' rights to freedom of expression during parliamentary debates; and the systematic denial of the right to speak for opposition members of parliament at those debates.

B Decision

The Committee on the Human Rights of Parliamentarians:

1. *Thanks* the parliamentary authorities for the additional information that they provided, including the video showing in part what transpired in the plenary room on 12 May 2016; but *notes*, however, that the video does not offer any clarity on the verbal exchange between Ms. Orellana and the Speaker or on Ms. Orellana's alleged violent removal from the premises;

2. *Affirms* its long-standing belief that disciplinary sanctions against parliamentarians should always be proportionate and seen as a measure of last resort, given their often negative impact on the exercise of the right to freedom of expression of the parliamentarians concerned and – indirectly – on the electorate they represent; *affirms* also that due process should always be scrupulously followed when the application of such measures are discussed and decided on; *considers* in this regard that, in the case at hand, the Speaker's involvement in the CAL's work tarnished the perception of an impartial decision-making process, as the Speaker was a direct party to the conflict; and *sincerely hopes* that the parliamentary authorities will avoid such a situation in future, including by carrying out, if need be, a more extensive review of the mandate and functioning of the CAL to ensure that due process is fully respected in disciplinary proceedings against parliamentarians;

3. *Notes* that the suspension lasted for one month and ended more than three years ago, and that the complainant has not responded to requests for information or provided details on possible new developments;

4. *Decides* therefore *to close* the case in accordance with section 25(a) and (b) of Annex I of its Procedure for the examination and treatment of complaints.

5. *Requests* the Secretary General to convey this decision to the parliamentary authorities and to the complainant.

Ecuador

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ECU-70 - Fernando Bustamante Ponce

Alleged human rights violations:

- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Violation of freedom of opinion and expression
- ✓ Other acts obstructing the exercise of the parliamentary mandate

A. Summary of the case

Mr. Fernando Bustamante Ponce claimed that his right to freedom of expression had been violated and that there was no effective national remedy. At the time of the claim, Mr. Bustamante was a member of the National Assembly of Ecuador.

On 3 December 2015, Mr. Bustamante abstained from voting on the approval of amendments to the Ecuadorian Constitution. Mr. Bustamante considered that several amendments were against his own ideology and fundamental principles. He therefore decided to abstain during the vote, despite the clear mandate from his party, *Alianza Pais* (the ruling party), to vote in favour.

On 7 December 2015, the *Alianza Pais* Ethics Committee imposed the following sanctions against Mr. Bustamante for having abstained in that vote: (i) a six-month suspension of his rights as a member of the party; (ii) a one-month suspension from participation in meetings of the *Alianza Pais* parliamentary group; (iii) a one-month suspension from participation in the plenary of the National Assembly; and (iv) a ban on membership of the National Assembly International Relations Committee.

CASE ECU-70

Ecuador: Parliament affiliated to the IPU

Victim(s): Male former member of the National Assembly; former member of the ruling party

Qualified complainant(s): Section I.1(d) of the Committee Procedure (Annex I)

Submission of complaint(s): June 2016

Recent IPU decision(s): October 2016

IPU Mission(s): - - -

Recent Committee hearing(s):
Hearing with the General Coordinator of the Legal Advisory Service of the National Assembly during 161st session of the Committee (January 2020)

Recent follow-up:
- Communication from the authorities: Letter from the Speaker of the National Assembly (November 2019)
- Communication from the complainant: November 2016
- Communication addressed to the authorities: Letter addressed to the Speaker of the National Assembly (November 2019)
- Communication addressed to the complainant: December 2019

B. Decision

The Committee on the Human Rights of Parliamentarians:

1. *Thanks* the parliamentary authorities for the additional information that they provided;

2. *Expresses concern* about the serious accusations, which have not been convincingly refuted, that Mr. Bustamante faced reprisals for exercising his right to freedom of expression and for representing Ecuadorian citizens' interests in the best way he saw fit at a critical time in parliament; *notes* nevertheless that most of the official punishment he received affected his relationship with his political party rather than the exercise of his parliamentary mandate and that party political issues largely fall outside of the Committee's mandate;

3. *Notes* in particular that the suspension from the plenary of the National Assembly lasted for one month and ended more than four years ago, and that the complainant has not responded to requests for information or provided details on possible new developments;

4. *Decides* therefore to close the case in accordance with section 25(a) and (b) of Annex I of its Procedure for the examination and treatment of complaints;

5. *Requests* the Secretary General to convey this decision to the parliamentary authorities and the complainant.

Inter-Parliamentary Union
For democracy. For everyone.

Ecuador

EC71 - Lourdes Tibán

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 155th session (Geneva, 3 February 2018)

The Committee,

Seized of the case of Ms. Lourdes Tibán, a former member of the National Assembly of Ecuador,

1. *Notes* that the communication was submitted in due form by a qualified complainant under Section I(1)(d) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians);

2. *Notes* that the communication concerns an incumbent member of parliament at the time of the initial allegations;

3. *Notes* that the communication concerns allegations of threats and acts of intimidation, allegations which fall within the Committee's mandate;

4. *Considers*, therefore, that the complaint is admissible and *declares itself* competent to examine the case.

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