



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINNE DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 2 0 0 0 6 USA

November 28, 2011

Ref.: Case No. 12.597
Miguel Camba Campos et. al (Judges of the Constitutional Court)
Ecuador

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.597, Miguel Camba Campos et. al v. the Republic of Ecuador (hereinafter "the State", "the Ecuadorian State" or "Ecuador") before the jurisdiction of the Inter-American Court of Human Rights. The case deals with the arbitrary termination ("cese") of 8 judges of the Constitutional Court of Ecuador¹ by National Congress Resolution of November 25, 2004. This termination was an *ad hoc* mechanism not provided for in the Constitution or in statute to proceed to terminate judges of the Constitutional Court, which severely affected the principle of judicial independence. Moreover, after the termination of the judges, on December 1 2004, National Congress held impeachment proceedings against some of them, but they were not censured. Then, after the call to special sessions by the President, on December 8, 2004, National Congress voted for a second time regarding the impeachment proceedings and obtained a motion of censure.

In this regard, the Commission outlines that the victims had no procedural guarantees or any opportunity to defend themselves in relation to the termination and lack of procedural guarantees in the second vote of impeachment. In addition, the victims were arbitrarily and unreasonably prevented from filing *amparo* remedies against the termination resolution and they did not have access to an effective remedy for challenging the arbitrariness of the National Congress. These events occurred in a tense political context, in which Ecuador's judicial institutions were fragile.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000
San José, Costa Rica
Enclosure

¹ Miguel Camba Campos, Oswaldo Cevallos Buenos, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán and Manuel Jaramillo Córdova.

The State ratified the American Convention on Human Rights on December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984.

The Commission has designated Commissioner Luz Patricia Mejía, and Executive Secretary Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary; Tatiana Gos, attorney of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of Report 99/11 prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix 1) and the annexes used in the preparation of Report 99/11 (Annexes). The merits report was notified to the State by a communication dated July 28, 2011, which was given two months to report on the implementation of the recommendations made therein. On September 12, 2011, the State requested an extension of the deadline for submitting the report on compliance with the recommendations formulated by the IACHR in the Report 99/11. On September 15, 2011, the IACHR notified the State the granting of the extension until October 19, 2011. On, on September 27, 2011, the State requested another extension, without specifying the term, accepted the suspension of the period for submitting the case to the Court according to article 51.1 of the American Convention and expressed the renounce to present preliminary objections, according to article 46 of the Rules of Procedure of the IACHR. On October 14, 2011, the Commission notified the State the granting of the extension for one month and requested information on the implementation of the recommendations by November 15, 2011. On November 28, 2011, the State presented a report which did not reveal any substantial progress on the implementation of the recommendations.

The Commission observes, in general terms, that the State “recommends” adopting certain measures in an “immediate” way but it does not present information that reveals that certain steps have been taken in order to comply with recommendations of Report 99/11. In particular, as regards the recommendation to **“reincorporate the victims, in the Judiciary, in a position similar to that they had held (...) or, alternatively, if, on well-founded grounds, reincorporation is not possible, [...] proceed to pay reasonable compensation to the victims or, where applicable, their successors,”** the Commission notes that the State recommends the drafting of a report that explains that, at present, there are judges appointed at the Constitutional Court, and therefore, the reincorporation of the victims would imply affecting those judges rights. The State also recommends the preparation of a study on reparations for moral damages. The Commission observes that the State does not present information on the possibilities explored to effectively reincorporate the victims in the Judiciary nor has provided information regarding concrete steps toward compliance with this item.

With respect to the recommendation to **“pay the victims the salaries and labor and/or social benefits they did not receive from the time they were dismissed until the end of their mandate”**, the Commission notes that the State recommends to request that the Constitutional Court prepares a report to evaluate the situation of each victim, except Manuel Jaramillo Córdoba, who received no salary by the time of the termination, because he was an alternate judge. However, to date, no more precise information has been provided on when this report will be asked or the report itself or the corresponding payments.

Concerning the recommendation to **“publicly recognize, granting adequate publicity, the violations declared in the [...] case, in particular, the infringement on the independence of the Judiciary”**, the Commission observes that the State informed that the Ministry of Justice, Human Rights and Cult will be the institution in charge of organizing the public act and that the media for publication should be defined with the beneficiaries. The Commission notes that the information

provided does not reveal specific progress in relation with the public act of acknowledgment of its responsibility.

Regarding the recommendation to **“adopt measures of non-repetition, that assure the independence of the Judiciary, including the measures necessary so that domestic law and applicable practice obey clear criteria and ensure guarantees in the appointment, tenure, and removal of judges, in particular, a long enough term in judicial office to ensure their independence and the determination of the grounds for impeachment, in accordance with the standards established in the American Convention”**, the State recommends to provide the Inter-American Commission with the text of article 187 of the Political Constitution of Ecuador of 2008 and the Organic Law of the Judicial Function. However, the State did not explain how those norms and its actual implementation make it possible to regard the defects that gave rise to the facts of the instant case as overcome.

Therefore, the Commission is submitting this case to the jurisdiction of the Inter-American Court taking into account the need to obtain justice for the victims, and the issues of inter-American public order that the case raises.

The Inter-American Commission is submitting to the jurisdiction of the Court the full facts and human rights violations as set out in merits report 99/11 and asks the Court to adjudge and declare the international responsibility of the State of Ecuador for:

Violating the rights to a fair trial, to the freedom from ex post facto laws, and to judicial protection, enshrined in Articles 8, 9, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán y Manuel Jaramillo Córdova.

Consequently, the Commission is asking the Inter-American Court to order the following reparations:

1. (a) Reinstatement the victims in the judiciary, in positions similar to those that they held, with the same remuneration, social benefits, and rank comparable to that they would hold today if their functions had not been terminated, for the period of time that was remaining in their terms, or

(b) If, for grounded reasons, reinstatement is not possible, the State shall reasonably indemnify the victims, or if applicable to their successors, taking into account moral damages.
2. Pay the victims the professional wages, pensions and/or social benefits they failed to receive from the time of their termination up to the moment on which their terms would have ended.
3. Publicly recognize, granting adequate publicity, the violations declared in the present case, in particular, the infringement on the independence of the Judiciary.
4. Adopt measures of non-repetition, that assure the independence of the Judiciary, including the measures necessary so that domestic law and applicable practice obey clear criteria and ensure guarantees in the appointment, tenure, and removal of judges, in particular, a long enough term in judicial office to ensure their

independence and the determination of the grounds for impeachment, in accordance with the standards established in the American Convention.

With respect to the issues of inter-American public order that the case raises, the Commission notes that, specifically, the events occurred in a context characterized by the fragile state of the Judiciary, evidenced by the dismissal by the National Congress not only of the Constitutional Court, but also of the Supreme Court and the Supreme Electoral Court. These dismissals of Ecuador's supreme courts were followed by the activation of mechanisms designed to prevent access to justice by the judicial officers affected.

Therefore, the instant case incorporates analysis of the lack of clarity in procedures and grounds for the dismissal of judges under the principle of freedom from ex post facto laws set forth in Article 9 of the American Convention and constitutes an opportunity for the Court to develop its jurisprudence as regards the independence of the Judiciary, as well as standards of due process in impeachment proceedings, and the formulation of the grounds that may justify the removal of judges. Accordingly, the Court will be able to pronounce in greater depth on the judicial guarantees that should be established regarding the proceedings for the removal of judges.

In that sense, the instant case will allow to establish principles that will contribute to the strengthen of the independence of the Judiciary in the democracies of the Hemisphere and will guide the improvement of the proceedings for the removal of judges, in particular, with respect to high Courts and in contexts of political controversies.

Since these matters significantly affect the inter-American public order of human rights, pursuant to Article 35.1(f) of the Rules of Procedure of the Inter-American Court, the Commission asks the Court to incorporate in the case file, the expert paper of Param Kumaraswamy in the case Quintana Coello et. al v. Ecuador, and offers the following expert's statement:

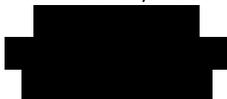
1. Leandro Despouy, who will analyze the guarantees of due process of law in impeachment proceedings and the limits of political review on the Judiciary, in particular, the formulation of the grounds for removal of judges. The expert will also refer to the obligation of establishing effective remedies for the judges to allege the illegality of their removal, in particular, judges from the high Courts.

The curriculum vitae of the expert proposed by the Inter-American Commission will be included in the annexes to merits report 99/11.

Finally, the name of the organization that served as petitioner in the case before the Commission and its particulars are as follows:

Clínica de Derechos Humanos
Facultad de Jurisprudencia
Pontificia Universidad Católica del Ecuador
Representada por David Cordero Heredia y Ramiro Ávila Santamaría

Bloque II, 5to Piso
Av. 12 de Octubre s/n y Ladrón de Guevara
Quito, Ecuador



Oswaldo Cevallos Buenos

Reina Victoria 1359 y Av. Colón, of 602-A
Quito, Ecuador
[REDACTED]

Upon notification of merits report 99/11, the petitioners updated their contact information as follows:

Address: Panzaleos S9-115 y Catamayo, Quito, Ecuador
[REDACTED]
[REDACTED]

Please accept renewed assurances of my highest regards.

Signed in the original

Santiago A. Canton
Executive Secretary