



THE CIVIL COUNTER CORRUPTION COMMISSION LAW

Ecuador, 12th. of August 1999

The Civil Counter Corruption Commission
Law Reproduction
OFFICIAL GAZETTE
THE GOVERNMENT OF ECUADOR
AGENCY
Administration of Dr. Jamil Mahuad Witt
Constitutional President of the Republic
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THE NATIONAL CONGRESS

Whereas

That the corruption in both public and private sector activities puts under risk the stability and the credibility of the democratic system, affects the internal and external image of the country, defers the satisfaction of the Ecuadorian people needs, limits investment and affects economic and human development;

That Ecuador is one of the subscribers of the Inter-American Convention Against Corruption, approved in Caracas on the 29th. of May 1996, which has been ratified by the National Congress, published in the Official Gazette No. 70 of 23th. May 1997;

That the Political Constitution of the Republic creates the Civic Counter Corruption Commission, as a legal person of public law, with autonomy and economic, political and administrative independence;

That article 3 of the Constitution, in its numeral 6, when referring to the primary duties of the State, it imperatively indicates that will guarantee the force of the democratic system and a public administration free of corruption;

That between duties and responsibilities that for the citizens establishes numeral 13 of article 97 of the Political Constitution it is the assumption of public functions as a service to the community and give account to the society and to the authority pursuant to the Law;

That it is a State duty and all its inhabitants to fight permanently against corruption and to eradicate its devastating effects; and,

In exercise of their constitutional and legal powers, issues the following,

CIVIL COUNTER CORRUPTION COMMISSION

TITLE I

OF ITS NATURE

Article 1. Creation. The Civic Counter Corruption Commission, created by constitutional mandate, is a legal person of public law, with autonomy and economic, political and administrative independence and will act in representation of the citizenship. It has headquarters in Quito and it will be able to constitute delegations in the provinces and districts that are deemed advisable.

Article 2. Objective. The Commission will accomplish the necessary actions for the prevention, investigation, identification and individualization of acts of corruption, as well as dissemination of values and principles of transparency in the performance of the public matters. In order to do it, it will receive, process and investigate the acts of corruption to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation of acts of corruption of public officials and individual people involved in such acts under investigation. If evidence or criminal liability is found in the referred investigations, conclusions will be sent to the Public Ministry, the General State Controllershship and the jurisdictional agency that would be competent according to the Law.

The Commission will be preferably occupied of accusations on cases of graft, bribe, extortion, concussion, speculation, fraud of the financial system and fraudulent actions as a rule and other similar which affect either State resources or public sector institutions resources, including those in which there is partnership with the private sector.

Article 3. Structure. The Civic Counter Corruption Commission will be integrated by seven principal members and seven substitutes. They will last four years in their functions and could be reelected, only once.

Article 4. Assignment. Members of the Commission will be nominated by electoral colleges duly certified by each one of the following entities:

1. The National Universities Council and Polytechnic Schools;
2. Legally recognized professional unions, representing each sector at a national level;
3. The Ecuadorian Newspaper Publishers Association, Television Channel Association, Radio Broadcasting Association and National Journalist Federation;
4. The National Federations of the Chambers of Production;
5. Central Unions and Indigenous, Afroecuadorian and Peasants organizations, at a national level, and legally recognized;
6. National Women Organizations, legally recognized; and,
7. Human Rights Organizations and Consumer Defense, legally recognized.

The leaders of the sponsored organizations will not be able to be members of the Commission, unless they are separated from their respective staff functions.

Each one of these entities will designate a principal member with his/her respective substitute, who will replace him/her in the event of suspension, definitive or temporary absence; in this last case, until completing the period for which the principal member was elected.

The Supreme Electoral Court will summon with thirty days of anticipation to the date of election, to the respective electoral colleges so that they could proceed with assignments.

The Regulation of this Law will establish, within the election procedure, the mechanisms that make possible to spread the names of the candidates, before their election so that any citizen could present opposition and objections to the candidacies.

Article 5. Requirements to be member. To be member of the Civic Counter Corruption Commission it is necessary to fulfill the following requirements:

- a) Be Ecuadorian and older than thirty years old;
- b) Not to have legal impediment to exercise public duties;
- c) Enjoy recognized honesty and rectitude; and,
- d) Not to exercise duties in parties, movements or political organizations.

Article 6. Of the organs. The following are Civic Control Corruption Commission organs:

- a) The Commission Joint Session;
- b) The Presidency;
- c) The Vice-Presidency;
- d) The Provincial and District Delegations established by the Joint Session; and,
- e) The Executive Directorate.

TITLE II

OF THE POWERS OF THE COMMISSION JOINT SESSION

Article 7. Powers. The Civic Counter Corruption Commission will have the following powers:

- a) Formulate programs and lead campaigns against corruption, as well as preparation of a national prevention plan that will be informed to the top State authorities. The plan will be presented until one hundred twenty days after the Commission would have started its activities. It will contain policies, objectives, programs and actions, aimed at complying this purpose;
- b) Promote the citizenship participation and organization for the creation of legality and honesty culture;
- c) Know and investigate corruption claims that may have been presented and legally proceed before enough data is gathered to presume corruption;
- d) Request reports or documents to any public or private institution, or natural persons in order to verify the bases of cases under investigation; verify and pronounce on situations that imply conflicts of interest or improper utilization of privileged information, as well as accession with the same purposes to any file or information of any public office.

Authorities, public officials, or required managing will have to supply information in a term of twenty days. Every verification or inspection will have to be fulfilled by facts and documents related to the cases under investigation.

For authorities, required managing or public officials banking account examination, as well as credit cards or other documents related to operations of the financial system, the Commission will send their requests to the Superintendent of Banks; in the case of instruments related to Stock Market Law, to that official or to the Superintendent of Companies. In any circumstance, the mentioned authorities will have to satisfactorily answer the above-mentioned requests.

Any public official who refuses or does not fulfill with this mandate will be ceased in his/her position by special order given by respective authority. It will be taken an immediate action, after the Civic Counter Control Commission has informed on such contempt;

- e) Grant to the persons who spontaneously collaborate with the Commission in the clarification of the facts, legal protection for their personal safety through relevant authorities;
- f) Send, when the cases merit it, final reports of the investigation processes to both the General State Controllershship and to the Public Ministry, who will process such Commission reports, according to the Law;

- g) Receive extra-processal statements of persons who would have been aware of some act of corruption or that would have presumably participated on it;
- h) Request the competent administrative authorities, in merit to investigations, the corresponding sanctions;
- i) Know, approve and evaluate the administrative plan, and the annual budgetary proforma prepared by the Executive Director;
- j) Designate experts, and commission in writing to specialized outsiders so that on its behalf and representation investigations be carried out, whose results will be put in exclusive knowledge of the Commission;
- k) Issue the Functional Organizational Regulation of the Commission, as well as others that would be necessary for its organization and operation;
- l) Order that members of the public force render in a timely manner a strict protection to the members of the Commission or the respective delegates, only by means of a verbal request and official identification, without being necessary the authorization or any order from a hierarchic superior. In the event of the fact that a member of the public force would not fulfil that duty, such disrespect would be informed to the competent official so that he/she imposes the respective sanction, and report of it to the Commission; and,
- m) The others granted by the Political Constitution of the Republic and the laws.

TITLE III OF OBLIGATIONS AND JURISDICTION

Article 8. Obligations. All members and directors of the Civic Counter Corruption Commission will have the following obligations and prohibitions:

- a) Submit at the beginning and at the end of their management a the sworn patrimonial statement as established in article 122 of the Political Constitution of the Republic;
- b) Keep absolute secrecy on all investigations that have been carried out, as well as all information that reach to their knowledge in an indirect or direct way as a result of their work in the Commission, until the investigations are concluded and the corresponding report is issued. This obligation, as well as the one stated in previous literal, includes all Civic Counter Corruption Commission officials, personnel and workers who would be dismissed in the event of nonfulfillment;
- c) Not to participate in the investigations of facts where there would be conflict of interest or somehow involved either personally or their relatives within fourth degree of consanguinity and second of affinity;
- d) Not to participate in political and factional activities; and,
- e) Other established in this Law and respective Regulations.

Article 9. Jurisdiction. Members of the Civic Counter Corruption Commission will have Supreme Court jurisdiction.

TITLE IV OF THE POSITIONS

Article 10. President. The President of the Commission will be elected among its principal members, with the favorable vote of most of them. He/she will last two years in his/her position and could be reelected.

Article 11. Powers and duties of the President. The President of the Commission has the following powers and duties:

- a) Fulfil and make fulfil this Law and the decisions of the Commission Joint Session;
- b) Exercise the legal representation of the Commission;
- c) Call, preside meetings of the Commission Joint Session and propose corresponding agenda;
- d) Present to the citizenship by means of the National Congress the annual report on the state, operation and activities of the Commission; and,
- e) The others established in the Law and Regulations.

Article 12. Vice-President. The Vice-President will be elected among the principal members of the Commission, in the same way as the President. He/she will replace him/her in the event of temporary absence, and in case of a definitive absence, until completing the period for which he/she was elected. In this last case, the Commission will proceed to appoint among its members to the Vice-president.

Article 13. Executive Director. The Commission will appoint from outside an Executive Director who

besides gathering the requirements indicated in article 5 of this Law, will need to have a university degree. The Executive Director position will be of free appointment and removal.

Article 14. Powers. The Executive Director of the Commission will:

- a) Exercise Commission administrative and financial management;
- b) Elaborate and submit to the Commission the annual budgetary proforma of the organization; and,
- c) Exercise other powers conferred to him/her by regulations or delegations given by the President and/or the Commission.

Article 15. Dismissal causes. Members of the Commission will be dismissed by its Joint Session, exclusively because of the following causes:

- a) If a plenary stage proceeding of a case has been opened against him/her or there is a condemnatory criminal judgment within a penal trial because of fraudulent offenses;
- b) Violate secrecy that involved in the investigations of the Commission;
- c) Incur in serious guilt in the exercise of his/her functions, same that will have to be qualified by at least two-thirds of the Commission members;
- d) Participate in the investigation processes where conflicts of interest have been found;
- e) Deliberately hinder procedures and investigations of the Commission; and,
- f) Have presented accusations against other or other members of the Commission, that become malicious or rash.

Article 16. Suspension causes. When an investigation, judge and dismissal process have started against a Commission member, because of any of the causes mentioned in literal b), c), d) and e) of the previous article, member or members under discussion will remain suspended in the exercise of their functions until the Joint Session of the Commission solves on their liability.

TITLE V OF THE INVESTIGATION, JUDGE AND DISMISSAL PROCESS OF THE MEMBERS OF THE COMMISSION

Article 17. Without prejudice of administrative, civil and penal actions established by Law, the investigation and prosecution process to a member of the Commission, will have to start subject to duty or complaint filing in those cases pointed out in Article 15 of this Law.

Article 18. In the cases of complaint, this will have to be previously recognized by the claimant, subject to the following rules:

- a) If a member of the Commission files a complaint against other member, he/she will have to formalize it in writing, indicating their bases and accompanying material evidences or documents he/she has; and,
- b) If other person knew that a member of the Commission, is found liable to one of the dismissal causes he/she will file a formal complaint in the terms indicated in the preceding procedures.

All complaints must be acknowledged before the President of the Commission or his replacement. The content of the complaint will be confidential.

The claimant will have to give all the cooperation and information required by the Commission in order to sustain his/her complaint.

Any complaint qualified in the terms of literal f) of article 15 of this Law, that derives from an outsider, will follow regulations established in the Penal Procedure Code.

In any circumstance it remains an action by moral damage.

Article 19. Once the arraignment is recognized, the Commission will be able to declare its inappropriateness and order to be filed, by means of a duly based resolution.

On the contrary, if arraignment is qualified and accepted to procedure, it will be ordered the immediate citation to the member of the Commission to whom it has been lodged a complaint, giving to him/her the term of fifteen days to answer it in writing.

Article 20. Once the term established in the previous article concludes within the three following business days, through either the answer to the arraignment or by default, the Commission will call the parties so that the respective evidences be presented during the following fifteen days.

Article 21. After evidences are acted, the Commission will have ten days to accomplish the respecti-

ve assessment. Once such term is concluded it will solve on the denounced liability in a term not superior to ten days.

Article 22. The Commission will adopt its resolutions by majority of votes of their members in a single meeting. The single resolution will be refutable before the Constitutional Court.

Article 23. Funding and Budget. The Civic Counter Corruption Commission funding will be stated in the General State Budget.

TRANSTORY DISPOSITIONS

FIRST. The Electoral Supreme Court, will summon to the electoral colleges, within the sixty subsequent days, counted as of the force of the present Law.

SECOND. Members of the Civic Counter Corruption Commission appointed by the President of the Republic in line with the Thirteenth Transient Resolution of the Political Constitution, will last in their functions until they are replaced, as established by this present Law.

FINAL DISPOSITION

According to the Political Constitution, the President of the Republic will be in charge of dictating the respective Regulation of application to this present Law.

Given in the city of San Francisco de Quito, Metropolitan District, in the board room of the National Congress of Ecuador, on the fifth day of the month of August nineteen ninety nine.

f) Eng. Juan Jose Pons Arízaga, President

f) B.A. Guillermo H. Astudillo Ibarra, General Secretary

NATIONAL CONGRESS

I certify: That the above copy is a true certified copy of the original that remains in the files of the General Secretariat.