

Quito, Metropolitan District, February 11, 2010

JUDGMENT NO. 0006-10-DTI-CC

CASE N. 0015-10-TI

THE CONSTITUTIONAL COURT

for the Period of Transition

Opining Judge: Hon. Hernando Morales Vinueza

I. BACKGROUND

Attorney Alexis Mera Giler, National Legal Secretary of the Presidency of the Republic of Ecuador, via letter No. T. 4994-SNJ-101-75 of January 13, 2010, forwarded this Court the “Donation Agreement by and among the Republic of Ecuador and the Bolivarian Republic of Venezuela for the Provision of Technical Assistance, Supplies and other Equipment for People with Disabilities,” signed on October 7, 2009.

The Agreement seeks to enable the purposes of the Solidarity Mission “*Manuela Espejo*” of the Republic of Ecuador, for the timely social treatment of persons with disabilities in our countries.

In accordance with article 109 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, we hereby request that this Court issue a resolution determining whether the referenced Agreement requires legislative approval or not; nonetheless, it notes, that unless there is judgment to the contrary, this approval should not apply given the cases provided by article 419 of the Constitution of the Republic, as it addresses the encouragement and promotion among both countries in matters of disabilities.

II. TEXT OF THE AGREEMENT SUBJECT TO THE COURT’S EXAMINATION

“DONATION AGREEMENT BY AND AMONG THE REPUBLIC OF ECUADOR AND THE BOLIVARIAN REPUBLIC OF VENEZUELA FOR THE PROVISION OF TECHNICAL ASSISTANCE, SUPPLIES AND OTHER EQUIPMENT FOR PEOPLE WITH DISABILITIES”

The Republic of Ecuador and the Bolivarian Republic of Venezuela, hereinafter designated as “Donating Party and Donated Party,” respectively;

ENCOURAGED by a need to promote and broaden the cooperation between both countries, based on principles of equality, solidarity, reciprocity, inclusion and social treatment to the benefit of both peoples;

CONSIDERING the initiative of the Revolutionary Government of Ecuador through the Solidarity Mission “*Manuela Espejo*”, which seeks to study the causes for disability, the

potential for educational and employment development of the persons affected, as well as the requirements for attention of the disabled persons and more.

CONSIDERING the will of the Parties to limit and deepen the existing cooperation and friendship links;

Agree to the following:

ARTICLE I

This Donation Agreement seeks to enable the purposes of the Solidarity Mission “*Manuela Espejo*” of the Republic of Ecuador, for the timely social care of disabled persons in this country, in order to contribute and promote their social inclusion and their wellbeing based on principles of equality, mutual respect for sovereignty and reciprocity of advantages, pursuant to their respective domestic legal frameworks and the matters provided in this instrument.

ARTICLE II

Given the needs derived from the results of the bio-psychosocial and clinical genetic study that was performed by the Solidarity Mission “*Manuela Espejo*”, regarding the reality of the Ecuadorian population with a disability, the Government of the Bolivarian Republic of Venezuela, via this Donation Agreement, grants the technical assistance and supplies to the Government of the Republic of Ecuador, which are detailed (description and quantities) in the list attached to the present instrument.

“THE DONATING PARTY” declares that the assets and technical assistance that are granted to it via this Donation Agreement shall be provided to the disabled population in the provinces of Ecuador, where this disability study is being performed, initiated by Cotopaxi and Carchi, and continuing in the rest of the provinces diagnosed until the quantity of donated articles is exhausted.

ARTICLE III

The Government of the Republic of Ecuador shall offer the representatives of the Bolivarian Republic of Venezuela that will participate in the implementation of this Agreement, all the assistance so that they remain in the Ecuadorian territory, under fulfillment of the migratory administrative procedures established in the Ecuadorian legal framework. This permanence must be possible until completion of the bio-psychosocial and clinical-genetic study that will be performed under the Solidarity Mission “*Manuela Espejo*.”

ARTICLE IV

During the permanence of the representatives of the Bolivarian Republic Of Venezuela in Ecuadorian territory, they must respect the sovereignty of Ecuador and they shall not be able to perform activities that violate the Ecuadorian framework.

ARTICLE V

For the implementation of this Donation Agreement, the Vice Presidency of the Republic of Ecuador shall be the party in charge of receiving, administering, delivering and granting the entirety of the articles granted pursuant to the signature of the Delivery Deed corresponding to this instrument, and commits to inform the “Donating Party”, of the final destination of the goods granted once the delivery to beneficiaries has been completed.

ARTICLE VI

In order to pack and transport the goods granted from Venezuela to Ecuador via this Donating Agreement, “the Donated Party” shall assume the costs that arise from said operations, until the delivery and arrival port in Ecuador.

Similarly, “the Donated Party” shall be in charge of performing the corresponding customs proceedings and other proceedings that are relevant as applicable.

ARTICLE VII

This Donation Agreement may be modified pursuant to mutual agreement of “THE PARTIES”.

The amendments shall enter into force in accordance with the procedure established for the entry into force of this Agreement.

ARTICLE VIII

The doubts and controversies that may arise from the interpretation and-or application this Donation Agreement, shall be resolved through direct negotiation among “THE PARTIES”, via diplomacy.

ARTICLE IX

This Donation Agreement shall enter into force on the date of the last communication via which “THE PARTIES” inform of compliance with their respective constitutional and domestic legal requirements for these purposes, and shall have a term of (1) year, which may be extended for equal periods, unless one of the Parties informs the other, in writing and through diplomatic avenues, its intent of not extending it, with a minimum of six (6) months advance notice from date of expiration.

Any of the Parties shall be able to claim at any time during this Agreement, in writing, through diplomacy. The claim shall be effective six (6) months from receipt of said notice.

ARTICLE X

Neither of “THE PARTIES” shall be liable for a complete or partial nonperformance of the obligations assumed by virtue of this Agreement, when such failure to implement is due to Act of God or Force Majeure. For these cases, the party claiming act of God or force majeure, must inform the other party within two (2) business days, counted from the date that the event is caused and prove it within ten (10) business days following the notice date. If the

situation that produces the Act of God or Force Majeure had a term over two (2) months, the Party that has been impeded, can request a new term from the other to fulfill its obligations.

Signed in the city of Caracas, Bolivarian Republic Of Venezuela on the 7th day of October 2009, in two copies, in Spanish, that are identical texts.

III. CONSIDERATIONS OF THE COURT

Jurisdiction of the Constitutional Court for the period of transition

By virtue of article 438 of the Constitution, the Bench of the Constitutional Court for the period of transition, has jurisdiction to resolve, via binding decision, on the constitutionality of international instruments. Further, according to article 75, numeral 3, subparagraph d of the Law of Jurisdictional Guarantees and Constitutional Control, the Constitutional Court has jurisdiction to exercise the constitutional review of international Treaties.

The modalities of the entry into force of international instruments in the Ecuadorian legal framework.

The participation of the Ecuadorian State in the international arena and the set of relationships that it establishes with the other States and peoples of the world are stated through international instruments of a diverse nature, which require an advance procedure for their entry into force in our legal framework.

In accordance with the matters established in article 418 of the Constitution of the Republic of Ecuador, the President of the Republic is responsible for signing or authorizing the treaties and other international instruments, and this authorization is the last step so that these enter into force, whether they are treaties that require advance legislative approval, or instruments that do not require this approval stage. In effect, as noted by this Court, an international treaty passes through the following stages: a) Negotiation by the Executive; b) Signature of the Executive; c) Approval of Congress; and, d) Approval by the Executive.

In accordance with article 419 of the Fundamental Charter, certain subject matters exist that the various international treaties that require legislative approval can address, given the importance of the commitment acquired by the State and the need for an opinion of the forum that reflects popular sovereignty and the greatest representation of the Ecuadorian people; these are the following:

- a) Territorial matters or border.
- b) Establishment of political or military alliances.
- c) The commitment of issuing, modifying or repealing a law.
- d) Rights and guarantees established in the Constitution.

- e) Commitment of the economic State policy established in its National Development Plan, on the condition of international financial institutions or transnational companies.
- f) Integration and trade.
- g) Attribution of competencies that apply to the internal legal order to an international or supranational body.
- h) Commitment of natural patrimony, especially water, biodiversity and its genetic patrimony.

This determination implies, in turn, that the commitments acquired by the State, bilateral or multilaterally with other States in any other matters, can be authorized by the President of the Republic without the need of approval of National Congress.

The need to determine the modality of entry into force of a treaty or international instrument.

Although it is true, article 419 of the Constitution determines such treaties that, because of the subject matter that they address, require legislative approval, it is no less certain that in certain circumstances, their objectives could lead to mistakes and lead, for example, to excluding the actions of National Congress in the formation of a treaty, causing, therefore, a flawed procedure, and for this reason, the Organic Law of Jurisdictional Guarantees and Constitutional Control

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contemplate a level of advance review under responsibility of the Constitutional Court, in the framework of its jurisdiction of constitutional review contemplated by the Fundamental Charter, to determine whether the treaty that must be approved by the President of the Republic, requires legislative approval or not- a provision that ensures the correct procedure subject to the competencies that are constitutionally established.

The content of the Agreement and its authorization mechanism

The Agreement signed by the Bolivarian Republic Of Venezuela and the Republic of Ecuador, subject to examination of the Court, becomes concrete with the delivery of technical assistance and supplies, via donation, by the Venezuelan Government, to facilitate the objectives sought by the *Manuela Espejo* Mission of Ecuador, for disabled persons, in order to promote their social inclusion.

This is about, in essence, a bilateral agreement among governments with similar objectives of attention to their population that, because of special conditions, merit adequate protection; this constitutes, therefore, a collaboration, solidarity and reciprocity agreement that aims to achieve treatment and inclusion objectives to the benefit of the peoples.

The nature of the Agreement signed by and among the Venezuelan and Ecuadorian States, as referenced, is of cooperation in a very specific area, and bears a relationship to the treatment

and promotion of a sector of society that is the responsibility of a specialized entity, expressly created for these purposes; this subject matter is not covered by those contemplated in article 419 of the Constitution of the Republic, that require advance legislative approval, prior to authorization by the President of the Republic.

IV. DECISION

In light of the foregoing, administering constitutional justice and by mandate of the CoR, the Plenary of the Constitutional Court for the period of transition:

RESOLVES

1. That, according to the Donation Agreement by and among the Republic of Ecuador and Bolivarian Republic Of Venezuela for the Provision of Technical Assistance, Supplies and other Equipment for Persons with Disabilities, it does not require approval of the National Assembly.
2. That the President of the Republic must continue the proceedings to approve the Agreement, subject to examination.
3. Service, publication and fulfillment is hereby ordered.

s./ Hon. Patricio Pazmiño Freire, President.

s./ Hon. Arturo Larrea Jijón, Secretary General.

Certification: I hereby certify that the above Resolution was approved by the Plenary of the Constitutional Court for the transitional period, with eight votes in favor, of judges: Roberto Bhrunis Lemarie, Patricio Herrea Betancourt, Ruth Seni Pinoargote, Alfonso Luz Yunes, Hernando Morales Vinueza, Fabián Sancho Lobato, Edgar Zárate Zarate and Patricio Pazmiño Freire; not including the presence of Hon. Manuel Viteri Olvera, in session on Thursday February eleventh two-thousand and ten. I hereby certify.

s./ Hon. Arturo Larrea Jijón, Secretary General.

CONSTITUTIONAL COURT. – This is a faithful copy of the original. – Reviewed by.... s./ Illegible signature. – Quito, February 17, 2010. s./ Secretary General.