Last Court Standing

On the Recent Authoritarian Attacks Against the Ecuadorian Constitutional Court

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Democracy and the rule of law are in decay globally. In Ecuador, President Daniel Noboa continues his attempts to transform the state towards authoritarianism. So far, the Constitutional Court has successfully resisted these attempts. Despite all the attacks from the government, the court has managed to preserve its independence and integrity. Whether it can maintain this position will likely become clear in the coming days. Two rulings are pending that are crucial for the survival of Ecuadorian democracy. For this reason, the court is once again facing drastic intimidation.

Background

President Daniel Noboa, who was recently elected in 2025, started a war against the Constitutional Court. It began in August 2025, when the Court declared some laws promoted by the President unconstitutional (see Gutmann). Noboa reacted with a Protest march to the Constitutional Court, accusing the judges of "stealing the peace". There was even a big banner outside the court, displaying the judges' pictures and the accusation. This situation set off the United Nations' alarms. Margaret Satterthwaite, Special Rapporteur on the Independence of Judges and Lawyers for the United Nations, declared:

> *"When high-ranking officials label judges as enemies of the people for fulfilling their duties, the independence of the judiciary is jeopardized."*

Now, the second round of intimidation has begun. Last year, the State Comptroller General – in charge of the well management of public resources according to Art. 211 of the Constitution – initiated a thorough audit of the court's finances and those of the judges. Now, he delivered two reports with evidence of criminal liability against two of the Constitutional Judges. In his sworn financial disclosure statements, he accuses the judges Alí Lozado (former president of the court) and José Luis Terán of alleged inconsistencies. The financial integrity of public officials is of great importance, especially given the level of corruption that has also affected Ecuadorian courts (see Guerrero Salgado). Nevertheless, there is no suspicion of corruption against the Constitutional Court. Therefore, the investigation was identified by many observers, among them the newspaper Expreso (p. 2) (which itself recently faced what were presumably politically motivated investigations), as a continuation of the intimidation against the court; the allegations against Lozado appear to be completely unfounded.

Not the weather for elections

Most likely, the timing and the painstaking nature of the investigations are due to the court having to resolve two cases that are crucial to Noboa's authoritarian project.

Firstly, the court must decide whether the recent anticipation of the upcoming elections is constitutional. Originally, Ecuadorians were scheduled to vote in local elections (elecciones seccionales) on February 14, 2027. Some days ago, the elections were rescheduled for November 29, 2026 by the electoral authority (Consejo Nacional Electoral, CNE). According to the CNE, this was a technical measure due to meteorological expertise which predicted that the El Niño phenomenon could be particularly severe this coming February. El Niño causes heavy rainfalls, especially in the coastal regions, which might indeed make it difficult to access polling places. Nevertheless, this reason seems to be a pretext. Predictions at such an early stage are still very imprecise. Moreover, this is an unprecedented situation: not even at the height of the

COVID-19 pandemic, which hit Ecuador severely (see Cervantes Valarezo), were elections postponed.

Early elections might favour the ruling party. The elections are probably anticipated to undermine the participation of the only party that can contest against Noboa: Revolución Ciudadana. On 13 March, the Electoral Tribunal accepted the petition of the General Prosecutor to suspend the Revolución Ciudadana party for nine months, the party of the ex-President Rafael Correa. With this suspension, the candidates need to seek affiliation with other parties, which will not be possible within the shortened time span.

It is highly doubtful whether the anticipation of the elections is constitutional, as it will shorten the term of office of the elected representatives. The CNE is also committed to strict neutrality. However, the CNE denied the court's competence to review the constitutionality of the anticipation. As an act of the "supreme authority" in electoral issues, the rescheduling would not be subject to constitutional review. In fact, the CNE plays an important role in the institutional setting established by the Ecuadorian constitution (CRE). The electoral function (función electoral), headed by the CNE is declared one of the five powers (Art. 217 CRE). But this position in no way implies that the CNE is not subject to constitutional control. In a constitutional state, all state powers are bound to the Constitution. It would be absurd to assume that the executive branch, as one of the five branches of government under the CRE, is exempt from constitutional review. On the contrary, the CRE subjects all state powers to constitutional review by the Constitutional Court; no exception is stipulated for the CNE.

Appointment of the General Prosecutor

On the other hand, the Constitutional Court must analyse the constitutionality of the appointment of the current General Prosecutor, Leonardo Alarcón. This is a faculty owned by the "Consejo de Participación Ciudadana", but after the resignation of the last Prosecutor and the Attorney General's interpretation, the Judiciary Council appointed by itself a lawyer friendly to the government. Now, the same Leonardo Alarcón has begun a criminal investigation against the constitutional judges.

Broader context

This is nothing new in Ecuador's history. Back in 1946, a similar situation occurred. Ecuador's 1945 Constitution established for the first time a Constitutional Tribunal with the power of judicial review (p. 57). When then-President Velasco Ibarra felt the pressure from the Constitutional Tribunal's restrictions, he decided to change the Constitution and to remove the Constitutional Tribunal. As Agustín Grijalva says:

> *"Velasco viewed the Court, as he publicly stated, as a superpower that subjugated the Executive branch. This is a common complaint among those who seek to concentrate power when faced with the limits of constitutional control."*

Eighty years have passed by since then, and the battle remains the same. Even President Noboa intended to change the 2008 Constitution with the November 2025 referendum. Luckily, people did not accept the proposal. 61.80 % of the population voted against Noboa's referendum. Yet the Constitutional Court continues to be a thorn in President Noboa's side. He tries to align the Constitutional Court, while he already controls the Electoral Council, the Electoral Court, the Prosecutor General, the Comptroller General, the Judiciary Council, and the Civic Participation Council. Of course, this inconvenience only means that the Constitutional Court is doing a good, independent job.

Constitutionalism is the limit of democracies based on reason (Elster and Slagstad, p. 34). And the purpose is simple; there must be fixed rules in a government so that when the majority in parliament, or the executive, does not change the basic rules of the government. In other words, Constitutions limit authoritarianism when a ruler tries to go beyond their rules. Therefore, the Constitution is the covenant in which the main rules and rights of a society are written, and the Constitutional Court is its guardian (see Vinx).

What's next?

Democracies die slowly. In Ecuador, its struggle for survival has reached a tipping point. As shown, most state authorities are already aligned with the president, making it easy to pressure the constitutional court. The court seems to be the last man standing who can safeguard the rule of law. In a public statement, it expressed its concerns about the intimidation and reaffirmed that "its judges will continue to perform their duties in accordance with the Constitution and the law, provided that the necessary safeguards for the independent and secure performance of their duties are maintained".

To maintain this position, however, the Constitutional Court would need the freedom to make bold decisions, and the government would need to accept this. Whether the conditions for this still exist is currently unclear. It is deeply concerning that judge Raúl Llasag, who is regarded as progressive, recently resigned, presumably due to mounting pressure.

What is left for the Ecuadorians? The 2008 Constitution holds a key. Art. 98 establishes the right to resist against actions of the public power that harm constitutional rights. In this case, the des-institutionalization only weakens Ecuadorian democracy. President Noboa is interfering in the checks and balances of the government. This kind of interference has led to the resignation of presidents like Richard Nixon in 1974. This precedent is a landmark where "no person, not even the President of the United States, is completely above the law "(Jianzhou, p. 7). In Ecuador, this question seems to be open. The international community should closely monitor this situation.

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