



Inter-Parliamentary Union

For democracy. For everyone.

Nicaragua

NIC11 - Wilber Ramón López Núñez
NIC12 - Luis Roberto Callejas Callejas
NIC13 - Raúl Benito Herrera Rivera
NIC14 - Carlos E. Mejía Zeledón (alternate)
NIC15 - Edgar Javier Vallejo Fernández
NIC16 - Carlos Javier Langrand Hernández
NIC17 - José Armando Herrera Maradiaga
NIC18 - Alberto José Lacayo Arguello
NIC19 - Rodolfo I. Quintana Cortez (alternate)
NIC20 - Juan Enrique Sáenz Navarrete
NIC21 - Silvia Nadine Gutiérrez Pinto (Ms.) (alternate)
NIC22 - Pedro Joaquín Chamorro Barrios
NIC23 - Marcia O. Sobalvarro Garia (Ms.) (alternate)
NIC24 - Francisco José Valdivia Martínez
NIC25 - Loyda Vanessa Valle González (Ms.) (alternate)
NIC26 - Eliseo Fabio Núñez Morales (alternate)
NIC27 - Indalecio Aniceto Rodríguez Alaniz
NIC28 - María Eugenia Sequeira Balladares (Ms.)
NIC29 - Víctor Hugo Tinoco Fonseca
NIC30 - Edipcia Juliana Dubón Castro (Ms.) (alternate)
NIC31 - Boanerges Matus Lazo

***Decision adopted by the Committee on the Human Rights of Parliamentarians
at its 152nd session (Geneva, 23 January to 3 February 2017)***

The Committee,

Referring to the case of the above-mentioned members of the National Assembly of Nicaragua,

Referring to the letter dated 18 January 2017 from the Speaker of the National Assembly of Nicaragua,

Considering the following information on file:

- The Alliance of the Independent Liberal Party (PLI), composed of various political tendencies, was created by the opposition to increase its representation in parliament; the PLI obtained 26 seats, plus their respective alternates, in the National Assembly in the elections of 2011;
- In February 2011, the PLI elected as its legal representative Mr. Indalecio Rodríguez; this decision was challenged before the Constitutional Chamber of the Supreme Court by a fraction of the PLI members who considered that his election violated the party statutes; on 8 June 2016 (five years later), the Constitutional Chamber of the Supreme Court, through amparo judgment No. 299, granted the amparo and declared Mr. Pedro Eulogio Reyes Vallejos instead as the legal representative of the PLI; this decision of the Supreme Court and the positions taken by Mr. Reyes Vallejos were publicly denounced by several of the PLI parliamentarians;

E

- On 28 July 2016, the CSE announced the revocation of the 16 parliamentarians and 12 alternates of the PLI, as requested by Mr. Reyes Vallejos; the CSE declared that articles 131.2 of the Constitution and 24.8 of the organic law on the legislature, among others, were applicable to the case; both articles provide that officials elected by universal suffrage, having been put forward on closed party lists, will lose their mandate if they change political party while in office;
- On 30 July 2016, the executive board (*Junta Directiva*) of the National Assembly acted on the CSE decision to unseat the 16 parliamentarians and 12 alternates by passing Resolution No. 14-2016;
- The dismissed parliamentarians and alternates filed an amparo action before the Supreme Court challenging the National Assembly's Resolution No. 14-2016; the petition for amparo was rejected on 12 September 2016;
- The complainant claims that the revocation of the mandate of the parliamentarians and alternates, who represented the last fraction of opposition in the National Assembly, was linked to their work as opposition parliamentarians and that it has to be seen in the context of the suppression of all critical voices from public debate;
- According to the complainant, the dismissed parliamentarians and alternates were not notified of the application to revoke their parliamentary mandates and were therefore prevented from exercising their right to defence;
- At the request of several of the dismissed members of parliament (apparently the seven members of parliament of the 28 members of parliament who had not subscribed to the original complaint to the IPU), the CSE decided to review their situation and decided to reintegrate them into the National Assembly,

Considering that, according to the Speaker of the National Assembly, proceedings were conducted in strict respect of national law and that no violations of human rights were committed against the dismissed parliamentarians,

Bearing in mind that Article 139 of the Nicaraguan Constitution recognizes that members of parliament are exempt from liability for any opinions they express or votes they cast in the Assembly, and that they enjoy immunity in conformity with the law; and that, according to Article 131 of the Constitution, officials elected by universal suffrage, and who have been put forward on closed lists by political parties, will lose their mandate if they change political party while in office,

Bearing in mind also that Nicaragua is a party to the American Convention on Human Rights and the International Covenant on Civil and Political Rights, and that both those instruments guarantee the right to freedom of expression and the right to participate in public affairs; *bearing in mind* that, in May 2014, the State of Nicaragua received several recommendations related to the need to guarantee freedom of expression and the independence of the media and to ensure that members of the political opposition, civil society organizations and journalists were free to express their views and opinions during its universal periodic review by the United Nations Human Rights Council,

Considering that, in a press release published on 8 August 2016, the Inter-American Commission on Human Rights (IACHR) expressed its concern regarding the removal from office of opposition legislators in Nicaragua, and urged the State to adopt any measures that may be necessary to ensure the free exercise of political rights in the country; the IACHR stated that, as the commission and the Inter-American Court on Human Rights have indicated, the American Convention on Human Rights establishes that the full scope of political rights may not be restricted in such a way that their regulation, or the decisions adopted in application of this regulation, prevents people from participating effectively in the governance of the State or cause this participation to become illusory, depriving such rights of their essential content; instituting and applying requirements for exercising political rights is not, per se, an undue restriction of political rights, as these rights are not absolute and may be subject to limitations; however, in a democratic society the regulation of these rights should respect the principles of legality, necessity, and proportionality; the IACHR added that, if the decision to remove the legislators from office meant that authorities elected by the mandate of the vote cannot serve out the terms for which they were elected, this decision could constitute an undue restriction on the exercise of political rights; in this regard, the IACHR urged Nicaragua to create the appropriate

conditions and mechanisms so that political rights can be exercised effectively, respecting the principle of equality and non-discrimination, and recommended that Nicaragua should adopt any measures necessary to guarantee due respect for the powers of political adversaries who have been elected and invested with the people's mandate,

Considering that general elections took place in Nicaragua on 6 November 2016 and that the complainant states that the timing of the revocation of the parliamentarians' mandates prevented them from standing in these elections and also from preparing their candidatures in time for the municipal elections planned for 2017,

1. *Thanks* the Speaker of the National Assembly for the information provided;
2. *Notes with concern* the allegation that the revocation of the mandates of the parliamentarians and alternates was linked to their work as opposition parliamentarians and that, due to the timing of the revocation, they were no longer in a position to register as candidates for the parliamentary elections of November 2016, thereby preventing the people who elected them from being represented in parliament;
3. *Stresses* that the revocation of a parliamentarian's mandate is a serious measure, which definitively deprives a member of the possibility of carrying out the mandate entrusted to him/her, and that it should therefore be executed in full accordance with the law and on serious grounds; *stresses also* that the legal framework in place should consequently protect the basic elements of the free parliamentary mandate, in particular the responsibility of members of parliament to represent the entire nation, and that in no way should public statements inconsistent with the party line be recognized as sufficient basis in law for early termination of a parliamentarian's mandate;
4. *Wishes* to receive clarifications from the relevant authorities concerning the following points: (i) the description of the facts that were considered by the CSE as sufficient under Nicaraguan law to revoke their mandate, all the more so in light of the fact that the parliamentarians were expelled from their party and did not de facto change political party; and (ii) the opportunities that were given to them to exercise their right to defence;
5. *Fails to understand* on what factual and legal basis several of the parliamentarians, presumably the seven individuals who are not part of the complaint before the Committee, were reintegrated into the National Assembly after their mandates had been revoked, which revocation was confirmed at final instance by a decision of the Supreme Court; *wishes* to receive official clarification on this matter;
6. *Requests* the Secretary General to convey this decision to the relevant authorities, the complainant and any third party likely to be in a position to supply relevant information;
7. *Decides* to continue examining this case.