

Judge Afiuni: A continued crime against human rights

I. General Prosecutor requests extension of remand

In a writ dated November 29th, 2011, the General Prosecutor's office requested the extension of preventive detention against Judge María Lourdes Afiuni. The Judge has been arbitrarily detained since December 10th 2009. This request is a continued violation of the Judge's human rights, since only six days after her detention on December 16, 2009 three UN human rights bodies described her detention as "arbitrary", urging Venezuelan authorities for her "immediate and unconditional release"¹.

The General Prosecutor said that extending of remand is justified because delays in the judicial process are due to "*causes attributable to the defense or the defendant*". However, the General Prosecutor does not mention that Judge Afiuni has appeared before the courts whenever she was asked to; she decided to challenge the court's authority in July 2010, when Judge Alí Paredes unilaterally and arbitrarily decided to suspend the jury screening process, and ordered a one-person trial court.

It is worth noting that article 64 of the Criminal Procedure Code states that one-person courts will only deal with crimes or offenses that do not deserve defendant's remand and cases where the maximum penalty does not exceed four years imprisonment. The first remand measure against Judge Afiuni was arbitrary, since she was deprived from personal freedom and yet her trial would be conducted by a one-person court. This obvious contradiction was never taken into account by the General Prosecutor's Human Rights Department.

On the other hand, the General Prosecutor's Office states in its writ that the extension of remand is requested bearing in mind that "*the more severe crime for which María Lourdes Afiuni is being accused is CORRUPTION, which carries a minimum term of three years imprisonment*"; according to the General Prosecutor's Office's view there is "a risk of evasion of justice". This presumption contradicts article 251 of the Criminal Procedure Code: "there is a presumption of evasion in cases where a crime carries imprisonment of up to ten years". Therefore, the General Prosecutor's Office has no legal ground to extend remand based on risk of evasion.

It should be further noted that article 256 of the Criminal Procedure Code sets a maximum of two measures alternative to imprisonment. However, Judge Afiuni has been subjected to three measures since February 2011: house arrest, periodic presentation before court and prohibition to declare to the media and, despite being illegal, she has fully complied with them; a fourth measure was imposed later on: she

¹ UN experts: President Chávez deals new blow to independence of judges and lawyers in Venezuela
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9677&LangID=e>

is forbidden from sunbathing and exercise, in violation of UN Standard Minimum Rules for the Treatment of Prisoners (Rule 21.1).

II. Suspended hearing

On December 9th, just a day before completing two years of preventive detention, Judge Afiuni went to court for her “traditional” presentation and to attend the private hearing about the eventual extension of her preventive detention. Suddenly the judge entered the court room wearing a robe, and court personnel brought a video camera. Both articles are only used for public hearings. Judge Afiuni left the court room in the event of the possible opening of a public trial she has been avoiding due to the denial of a mixed tribunal (judge and two jurors). Before the hearing Judge Afiuni’s lawyers filled a new complaint against the judge requesting his inhibition in the case. Although the law states that in such cases the judge should suspend the process and forward the complaint to a higher court for decision, once again he declared it “inadmissible” and tried to continue with the proceeding.

The representative of the General Prosecutor’s Office requested to suspend the private hearing because the Criminal Procedure Code requests the presence of the defendant. The hearing was suspended and the judge was due to set a date.

From that moment, Judge Afiuni’s detention was not only arbitrary but illegal.

III. Preventive detention is extended without hearing

On Monday December 12th the tribunal was closed to the public. On December 13th Judge Afiuni’s lawyers went to the tribunal to introduce a writ demanding the release of their defendant and were surprised by a writ signed by the judge extending Judge Afiuni’s preventive detention for another two years. The judge took this decision without a hearing.

In addition, it should be noticed that the General Prosecutor’s request says that “*the more severe crime for which María Lourdes Afiuni is being accused is CORRUPTION, which carries a minimum term of three years imprisonment*”. The extension of her preventive detention for a total of four years is not only illegal because it was decided without a hearing, but because it exceeds the supposed length of her eventual sanction.

IV. Rotation announced

On December Friday 16th, the Caracas Judicial Circuit announced a rotation of judges, which is a routine (but not always transparent) procedure; this could mean the eventual transfer of the case to another court. On Monday 19th, Judge Afiuni’s defense went to court to introduce an appeal and found that rotation did not take place and courts were not open to the public. The situation remains the same as for Tuesday

20th. In principle, courts will take a recess for Christmas season from December 22nd until January 9th. This implies that Judge Afiuni will be unable to exercise her right to appeal and will remain illegally deprived from her personal freedom.



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