

SELECTION CHAMBER OF THE CONSTITUTIONAL COURT OF ECUADOR. -
Quito, D.M., May 18, 2021.

IN VIEW OF. - The Selection Chamber, formed by Constitutional Judges Karla Andrade Quevedo, Daniela Salazar Marín and Constitutional Judge Enrique Herrería Bonnet, by virtue of the drawing of lots carried out on April 14, 2021 by the Plenary of the Constitutional Court, has taken cognizance of **protection action No. 974-21-JP**.

I

Procedural background

1. On April 30, 2020, thirty-two people, the Autonomous Decentralized Parochial Government of Guayusa, the Confederation of Indigenous Nationalities of the Ecuadorian Amazon, the Ceibo Alliance Foundation, the Ecumenical Human Rights Commission, the Ecology Action Corporation, the Latin American Association for Alternative Development, the Alejandra Labaka Foundation, the Center for Support and Protection of Human Rights "SURKUNA", the Union of affected and affected by the operations of Texaco, the Federation of United Communes of the Kichwa Nationality of the Ecuadorian Amazon, Jorge Acero Gonzalez and Carlos Mazabanda Calles filed an action for protection requesting the protection of human rights, the Federation of United Communes of the Kichwa Nationality of the Ecuadorian Amazon, the Center for Support and Protection of Human Rights, Jorge Acero González and Carlos Mazabanda Calles filed an action for protection with request for precautionary measures against the public hydrocarbons company of Ecuador EP PETROECUADOR, Ministry of Energy and Non-Renewable Natural Resources, Ministry of the Environment, Ministry of Public Health, Attorney General's Office and the Heavy Crude Oil Pipeline Company (OCP) ECUADOR S.A.
2. The plaintiff stated that on April 7, 2020, due to the rupture of the OCP pipelines and the Transecuadorian Oil Pipeline System (SOTE, managed by Petroecuador EP) in the vicinity of Cascada de San Rafael (Quijos sector between the provinces of Orellana and Sucumbíos), there was a spill of approximately fifteen thousand barrels of crude oil and gasoline base, which affected the banks of the Coca and Napo rivers, and caused irreparable damage to one hundred and nine ancestral communities.
3. The plaintiff warned that the spill could have been foreseen, both by OCP and by public institutions, since they were warned of the phenomenon of regressive erosion. The plaintiff also pointed out that, among other actions, the company should have modified a section of the pipeline passage, placed drainage valves, or carried out studies and research that would have prevented the spill or at least minimized it.

4. The plaintiff indicated that after the disaster of April 7, 2020, neither the State agencies, nor the companies that transport oil and its derivatives, intervened or generated agile and immediate warning mechanisms or timely information delivery to the natives and settlers of the riverbanks, so that they had the opportunity to prepare and take care of themselves, especially in the context of the health emergency caused by COVID 19.
5. Petroecuador EP indicated that it has not violated any rights, since it is a case of force majeure or fortuitous event and that, after the remediation it is carrying out, through different companies, the places will return to their previous state. He also added that he made an alternate connection between the Payamino and Coca rivers, thus guaranteeing the right to water of the ancestral and river communities, to whom he has also delivered sufficient water and food kits.
6. OCP stated that, upon detecting the disaster, it suspended pumping at 5:30 pm on April 7, 2020; however, the heavy crude oil pipeline ruptured in the early morning of April 8, 2020, at which time the Ministry of the Environment required the emergency plan, and in response, together with other companies, transferred its personnel to the site to carry out containment, mitigation, correction, cleanup, remediation and compensation activities.
7. The Ministry of Energy and Non-Renewable Natural Resources and the Ministry of the Environment specified that the protection action is not the way to claim environmental damage, since for that there is the ordinary justice system. For its part, the Ministry of Health stated that as soon as it became aware of the event, it activated an integral health plan, which was executed in the midst of limitations and great threats of contagion of COVID 19.
8. On October 10, 2020, the Multicompetent Judicial Unit based in the Francisco de Orellana canton denied the protection action and the request for precautionary measures because there was no evidence of a violation of rights and because ordinary remedies were available.
9. On March 23, 2021, the Sole Chamber of the Provincial Court of Justice of Orellana rejected the appeal filed by the plaintiff, and confirmed in all its parts the first instance ruling, which denied the action and left intact the rights that the plaintiffs may have to exercise their rights in the administrative or ordinary jurisdiction, as it considered that the claim is environmental damage, and the claim is individual and collective compensation for damages.

10. On April 29, 2021, the Constitutional Court received for its eventual selection and review the judgment of the protection action No. 22281-2020-00201 which was signed with the number 974-21-JP.

II Selection Criteria

11. Article 25 (4) of the Organic Law of Jurisdictional Guarantees and Constitutional Control (hereinafter, LOGJCC) determines as selection parameters: a) seriousness of the matter; b) novelty of the case and non-existence of judicial precedent; c) negation of the judicial precedents established by the Constitutional Court; and, d) national relevance or transcendence of the matter resolved in the judgment.
12. The seriousness of case No. 974-21-JP lies in the plaintiff's allegation that there was an omission and lack of timely information on the part of companies and state institutions regarding the rupture of a heavy crude oil pipeline, which put the population of the area and the indigenous peoples living there at risk. The disaster is worsening due to the health emergency caused by COVID 19.
13. The case reflects novelty because it may allow the Constitutional Court to analyze the alleged impact on the rights to a healthy environment and health of ancestral communities, and at the same time, the rights of nature, in order to develop parameters that have the purpose of protecting, not altering and, if necessary, restoring the vital cycles of nature and the environment.
14. Case No. 974-21-JP is a matter of national relevance as it involves the rights of one hundred and nine ancestral communities affected by the spill.
15. Consequently, Case No. 974-21-JP complies with the parameters of gravity and novelty, as provided for in the LOGJCC.
16. The selection parameters do not exclude other criteria, arguments or further rights that may be identified in the substantiation of the case, and the foregoing considerations do not anticipate arguments on the decision of the case.

III Decision

17. Based on the above criteria, the Selection Chamber resolves:

1. Select Case No. 974-21-JP for the development of jurisprudence.
2. To notify this order to the parties involved in the protection action and to the courts that gave rise to case No. 974-21-JP (No. 22281-2020-00201).
3. Order the courts that resolved protection action No. 22281-2020- 00201 (No. 974-21-JP) to send the complete file to the e-mail address demandas@cce.gob.ec within eight days of notification of this order. In the event of not having the file digitized or not being able to digitize it, within the same term, the original and complete file must be delivered and a copy of the same must be kept.
4. To publish the content of this selection order through the Constitutional Court's web portal and its social networks.
5. Refer this case, after drawing lots, to the substantive judge.

**KARLA
ELIZABETH**

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KARLA ELIZABETH
ANDRADE QUEVEDO
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**ANDRADE
QUEVEDO**

Karla Andrade Quevedo

CONSTITUTIONAL JUDGE

DANIELA

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DANIELA SALAZAR MARIN
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Daniela Salazar Marin

CONSTITUTIONAL JUDGE

**PABLO
ENRIQUE
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BONNET**

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Enrique Herrería Bonnet

CONSTITUTIONAL JUDGE

REASON. - I hereby certify that the above selection order was approved by three votes of Constitutional Judges Karla Andrade Quevedo, Daniela Salazar Marín and Constitutional Judge Enrique Herrería Bonnet, in session of May 18, 2021. I certify it. -

**CYNTHIA
PAULINA
LEAPS
CISNEROS**

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by CYNTHIA
PAULINA
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CISNEROS

Paulina Saltos Cisneros

**GENERAL SECRETARY SECRETARY
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