

## Litigation - Ecuador

### The Unconstitutionality of Law 55 and the *Forum non Conveniens* Doctrine

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US courts have long rejected tort complaints submitted by foreign companies against US corporations on the grounds of the doctrine of *forum non conveniens* (ie, inconvenient forum). This doctrine is based on the existence of at least one additional forum to that handling the case. The additional forum, which also has jurisdiction, is commonly referred to as the most appropriate or most convenient forum.

In several Latin American countries governments have attempted to avoid the possibility of local courts being considered the most convenient forum, so that they would have to decide complaints originally submitted abroad. This goal was to be achieved through the enactment of specific legislation designed to eliminate the alternative forum and thus prevent the application by US courts of the *forum non conveniens* doctrine. In this way citizens from these Latin American countries would be able to litigate against US corporations in the United States, where multi-million compensation is often awarded.

In Ecuador this attempt took the shape of Law 55, enacted in January 1998. This supposedly interpreted certain legal provisions of the Civil Procedure Code so that once a complaint was submitted to a court in a foreign country, Ecuadorian judges automatically lost competence over the matter.

An interpretative law figure was used in this case because in Ecuador these types of laws have retroactive effect. The retroactive effect of Law 55 would make it apply not only to future cases, but also to those initiated before the law's enactment and pending resolution by Ecuadorian courts. Law 55 was designed so that Ecuadorian courts would reject complaints brought before them which had previously been rejected by the US courts on the basis of *forum non conveniens*. In this way US courts would be forced to reaccept complaints that had already been rejected on the basis of the *forum non conveniens* doctrine, since the alternative, most convenient forum was no longer available. Essentially, Law 55 was designed to make the doctrine of *forum non conveniens* unavailable to US courts.

The rush to enact Law 55 caused both formal and hierarchical violations to the Ecuadorian Constitution. Notwithstanding that, lower courts kept enforcing Law 55 since the competent authority had not formally declared its unconstitutionality.

Such a formal declaration of unconstitutionality was only issued in April 2002, when the Constitutional Tribunal - the highest authority of Ecuador in constitutional matters - accepted the demand submitted by Dr Hernán Pérez Loose in October 2001.

As a result Ecuador no longer has any legal provision prohibiting the jurisdiction of local tribunals of justice over matters brought before them, even if the complaint is originally submitted abroad.

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