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### **1. Latest developments**

On 21 March 2019, Judge Afiuni was condemned for the crime of corruption to five years in prison by Trial Court N.17 of the Criminal Circuit of the Metropolitan Area of Caracas. She was acquitted of all other charges.

Judge Afiuni was arrested in December 2009 after she ordered the conditional release of Mr Eligio Cedeño, who then fled the country. At the time, Mr Cedeño had been held for almost three years in pre-trial detention which amounts to a violation two-year maximum stated in the Venezuelan Code of Criminal Procedure. The IBAHRI's observers, whom have been monitoring the case since 2012, have verified continuous violations to due process and fair trial guarantees during the observing of the criminal proceedings against Judge Afiuni.

The sentence of corruption comes despite the fact that on 21 March 2019 the Public Prosecutor's Office did not press any charges against Ms Afiuni on the basis that there was a complete lack of evidence that Ms Afiuni has received any money, undue favour or gain for her order to release Mr Cedeño on bail, as consistently confirmed by witnesses.<sup>1</sup> The Prosecution recognized the lack of evidence of corruption in May 2010 during the trial's preliminary hearing.

Serious concerns to the principle of legality arise from the fact that, according to Afiuni's lawyer Juan Carlos Goitia, Judge Bognanno did not establish the money, favour or gain that Ms Afiuni would have benefitted from,<sup>2</sup> which is a necessary element of the crime of corruption under the Venezuelan Law against Corruption. According to the 2003 Venezuelan Law against Corruption (see *infra*), a public employee that receives or accepts the promise of money or any undue advantage or gain is liable to up to seven years of prison and a pecuniary sanction of up to 50% of the

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<sup>1</sup> Tal Cual, *Graterol: Sentencia contra la juez Afiuni es un "error inexcusable" al carecer de pruebas*, 21 March 2019, <http://talcualdigital.com/index.php/2019/03/21/graterol-sentencia-contra-la-juez-afiuni-es-un-error-inexcusable-al-carecer-de-pruebas/>

<sup>2</sup> Reuters, *Venezuela court issues jail sentence for judge accused of corruption by Chavez*, 22 March 2019, <https://uk.reuters.com/article/uk-politica-venezuela/venezuela-court-issues-jail-sentence-for-judge-accused-of-corruption-by-chavez-idUKKCN1R307Y>

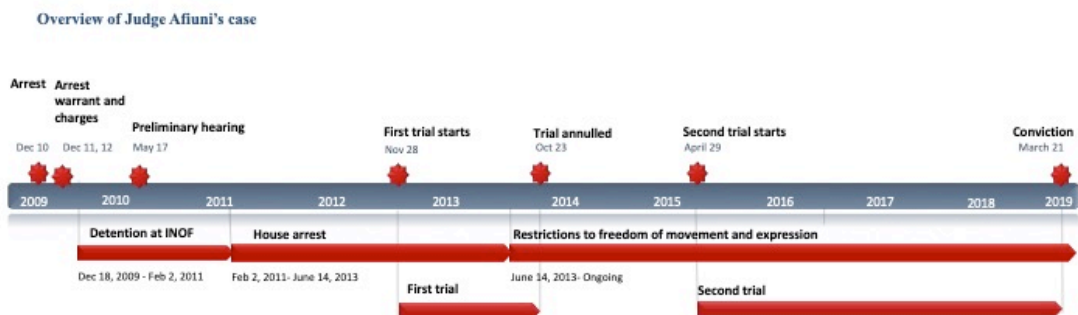


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undue gain received or promised. Lawyer Thelma Fernandez said that Judge Afiuni was condemned for the “newly invented crime of Spiritual Corruption”, i.e. corruption in absence of money or any other advantage.<sup>3</sup>

Although Judge Bognanno recognized that there had been no bribe or promise of a bribe to Ms Afiuni, he declared that a pecuniary sanction would be later determined. He established that the implementation of the prison penalty would be delayed until then. In the meantime, Judge Afiuni will continue to be subject to restrictions to her freedom of movement and expression (prohibition of leaving the country, using social media and speaking to the press). Lawyer Juan Carlos Goitia stated that the defence had not received a copy of the sentence yet.<sup>4</sup>

## 1. Key events



### 2009-2011: Arbitrary arrest, violations during detention and pre-trial phase

- **10 December 2009-** Judge Afiuni, appointed judge of the Procedural Court No.31 of the Metropolitan Area of Caracas Criminal Judicial Circuit, was

<sup>3</sup> See Thelma Fernandez's twitter page < <https://twitter.com/thelmafernandez>

<sup>4</sup> Reuters, “Venezuela court issues jail sentence for judge accused of corruption by Chavez” (22 March 2019) <<https://uk.reuters.com/article/uk-politica-venezuela/venezuela-court-issues-jail-sentence-for-judge-accused-of-corruption-by-chavez-idUKKCN1R307Y>>.



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arrested minutes after she ordered the release on bail of Eligio Cedeño, a Venezuelan banker accused of evading foreign currency control, who then fled the country. Mr Cedeño had been held for more than two and a half years in pre-trial detention, in violation of the Venezuelan Code of Criminal Procedure, which states a two-year maximum. Her decision took into account the United Nations Working Group on Arbitrary Detention's Opinion 10/2009, which had found that Mr Cedeño was being held arbitrarily.<sup>5</sup>

She was arrested by officials from the *Bolivarian Services of Intelligence* (SEBIN) without a warrant and was not informed of the charges against her or which authority had ordered the detention.

- **11 December 2009-** Former President Chávez declared during a TV program that Judge Afiuni was an “outlaw” and that she should be condemned to the highest penalty under Venezuelan law.<sup>6</sup>

On the same day, Afiuni received the arrest warrant, signed by Judge Leyvis Azuaje Toledo on behalf of Procedural Court No.50 of the Metropolitan Area of Caracas Criminal Judicial Circuit.<sup>7</sup>

Moreover, the Judicial Commission of the Supreme Court of Justice rendered the decision No.2009-0143, by which Afiuni was dismissed from her post as a judge and suspended without pay until the General Inspectorate of Tribunals concluded its investigation.<sup>8</sup>

- **12 December 2009-** Prosecutor, Ms Alicia Monroy, charged Ms Afiuni with the crimes of corruption, being an accessory to an escape, criminal conspiracy and misuse of authority/abuse of power.<sup>9</sup>
- **From December 2009 to February 2011-** Judge Afiuni was detained in a high security prison for women known as the Instituto Nacional de Orientación Femenina. During her detention she was subjected to multiple human rights

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<sup>5</sup> United Nations Working Group on Arbitrary Detention, Report A/HRC/13/30/Add.1, Opinion 10/2009, Communication addressed to the Government on 28 May 2009, p.172.

<sup>6</sup> Inter-American Commission on Human Rights, Report of Democracy and Human Rights in Venezuela, 30 December 2009, para 297-299, [https://www.cidh.oas.org/pdf\\_files/VENEZUELA\\_2009\\_ENG.pdf](https://www.cidh.oas.org/pdf_files/VENEZUELA_2009_ENG.pdf)

<sup>7</sup> United Nations Working Group on Arbitrary Detention, Report A/HRC/16/47/Add.1, Opinion 20/2010, Communication addressed to the Government on 17 March 2010, p.93, para 9.

<sup>8</sup> Human Rights Foundation, *Caso María Lourdes Afiuni – Informe Jurídico*, 4 May 2012, <http://humanrightsfoundation.org/uploads/Informe-Legal-Caso-Maria-Lourdes-Afiuni-Mora-17-01-2013.pdf>

<sup>9</sup> United Nations Working Group on Arbitrary Detention, Report A/HRC/16/47/Add.1, Opinion 20/2010, Communication addressed to the Government on 17 March 2010, p.93, para.12.



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violations, including threats to her life, torture and other cruel, degrading or inhuman treatment, sexual abuses and violations to her right to health.<sup>10</sup> She received death threats and attacks at the hands of female detainees whom she had sentenced. She was also tortured and raped, which led to a subsequent miscarriage.<sup>11</sup> The IBAHRI observers reported that such facility did not comply with the basic prison standards established by the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>12</sup>

In March 2010, the Working Group on Arbitrary Detention established that Judge Afiuni's detention was arbitrary.<sup>13</sup> The Chairperson-Rapporteur of the Working Group, El Hadji Malick Sow, in a speech before the UN Human Rights Council, stated that reprisals against judges for exercising their constitutionally guaranteed functions could not be tolerated by the UN Human Rights Council.<sup>14</sup>

- **17 May 2010-** The preliminary hearing on Afiuni's case was held before the Procedural Court No.26 of the Metropolitan Area Criminal Judicial Circuit (Judge Alí Paredes).

During the hearing the Public Prosecutor Ms Emilce Ramos Julio "admitted that there was no tangible evidence of a bribe in relation to the corruption charge against her but argued that the 'benefit' she had obtained was the freedom of the prisoner".<sup>15</sup>

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<sup>10</sup> OHCHR, Letter of Allegation UA VEN 1/2013, 25 January 2013,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19592>

<sup>11</sup> El Universal, *Cronología del caso de la Jueza María Lourdes Afiuni*, 2013, <http://www.eluniversal.com/nacional-y-politica/130614/cronologia-del-caso-de-la-jueza-maria-lourdes-afiuni>; Runrunes, *Jueza Afiuni revela por primera vez los abusos que le aplicaron rojos funcionarios en la cárcel*, 2012, <http://runrun.es/runrunes-de-bocaranda/runrunes/58994/jueza-afiuni-revela-por-primera-vez-los-abusos-que-le-aplicaron-rojos-funcionarios-en-la-carcel.html>

<sup>12</sup> IBAHRI, *The Execution of Justice: The Criminal Trial of Judge Maria Lourdes Afiuni*, April 2014, <http://www.ibanet.org/Document/Default.aspx?DocumentUid=614882EB-0B6D-436C-9C01-D4F4F33A3568>

<sup>13</sup> United Nations Working Group on Arbitrary Detention, Report A/HRC/16/47/Add.1, Opinion 20/2010, Communication addressed to the Government on 17 March 2010, para 49.

<sup>14</sup> Defence team of Afiuni, *International pronouncements – Arbitrary detention and trial of Judge Maria Lourdes Afiuni (Venezuela)*, September 2010, [http://w2.ucab.edu.ve/tl\\_files/CDH/Maria%20Lourdes%20Afiuni/Afiuni\\_intl\\_pronouncements\\_OCTUBRE\\_2010\\_EN.pdf](http://w2.ucab.edu.ve/tl_files/CDH/Maria%20Lourdes%20Afiuni/Afiuni_intl_pronouncements_OCTUBRE_2010_EN.pdf)

<sup>15</sup> International Bar Association's Human Rights Institute, *La ejecución de la justicia: el proceso penal de la jueza María Lourdes Afiuni*, April 2014, <https://www.ibanet.org/Document/Default.aspx?DocumentUid=177DC243-8A94-4E3D-9F1E-B0C7A4D97539>



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- **2 February 2011-** It was decided that for health reasons, as a result of the lack of adequate medical treatment in prison and the torture and ill-treatment suffered, which would require her to undergo surgery, Judge Afiuni would remain under domiciliary arrest.<sup>16</sup>

## 2012: First trial starts

- **13 February 2012-** The IBAHRI wrote to former President Hugo Rafael Chávez Frías urging to drop all charges against Judge Afiuni ([letter available here](#)).
- **June 2012-** Judge Afiuni's lawyer, Mr Graterol, was detained for his public criticism of the trial. He was condemned for obstruction of justice in December 2012.<sup>17</sup>
- **28 November 2012-** The criminal trial of Judge Afiuni began before the Trial Court No.17 of the Metropolitan Area of Caracas (Judge Marilda Rios). Judge Afiuni was not present in the hearing.

## 2013-2014: Conditional bail, first trial suspended

- **25 January 2013-** Several UN Special Rapporteurs addressed a letter to Venezuela.<sup>18</sup>
- **February 2013-** Several UN Special Rapporteurs commented on Judge Afiuni's situation, calling for her immediate release. The UN Special Rapporteur on Violence Against Women, Rashida Manjoo denounced that Venezuelan authorities did not act with the due diligence required to investigate the acts perpetrated against Afiuni in an immediate and impartial manner. The UN Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, expressed that Judge Afiuni's case was an emblematic example of reprisal for cooperating with UN human rights organs.<sup>19</sup>

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<sup>16</sup> OHCHR, *Expertos de la ONU alarmados por la detención continuada de la jueza venezolana Afiuni*, 27 December 2011, <http://newsarchive.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=11745&LangID=S>

<sup>17</sup> International Bar Association's Human Rights Institute, *The Criminal Trial of Venezuelan Lawyer José Amalio Graterol*, November 2013, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=d6d70307-d68c-4517-9fe9-0782fd43a2a8>

<sup>18</sup> OHCHR, Letter of Allegation UA VEN 1/2013, 25 January 2013, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19592>

<sup>19</sup> UN News Centre, *Venezuela must release judge who suffered sexual violence in jail – UN experts*, 14 February 2013, <http://www.un.org/apps/news/story.asp?NewsID=44141>



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- **14 June 2013-** Judge Afiuni's preventive detention was substituted with restrictions to her freedom of movement (ban from leaving the country, duty to report to tribunals every 15 days (later changed to 30 days)), her freedom of expression (ban from speaking to the media and using social media networks) and right to work.
- **23 October 2013-** Afiuni's trial was suspended due to the lack of assistance of Public Prosecutors to the scheduled hearings and was later annulled.<sup>20</sup>
- **April 2014-** The IBAHRI published a Spanish report, *The Execution of Justice: The Criminal Trial of Judge María Lourdes Afiuni*, which details a number of specific irregularities in her trial and states that the Venezuelan justice system does not contain adequate systemic safeguards to guarantee judicial independence, citing the trial of Judge Afiuni as emblematic of the situation in general. A five-page English language Executive Summary of *The Execution of Justice: The Criminal Trial of Judge María Lourdes Afiuni* was also distributed.
- **August 2014-** The UN Committee Against Torture, expressed serious concern over the lack of an independent judiciary, mentioning Judge Afiuni's case as evidence of the repercussions that judges face when ruling against governmental interests.<sup>21</sup>

#### **2015-2018: Due process violations during the second trial**

- **29 April 2015-** After continuous suspensions and interruptions, a second trial began.

According to the IBAHRI's observers:

- a) the proceedings were suspended more than 60 times until 31 January 2018;
- b) the proceedings exceeded by far the maximum term of the penalty of seven years provided for the crimes for which Judge Afiuni is tried;

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<sup>20</sup> American Bar Association, *El caso de María Lourdes Afiuni*, December 2013, [https://www.americanbar.org/content/dam/aba/administrative/individual\\_rights/aba\\_chr\\_trial\\_report\\_afiu\\_ni\\_spanish.pdf](https://www.americanbar.org/content/dam/aba/administrative/individual_rights/aba_chr_trial_report_afiu_ni_spanish.pdf)

<sup>21</sup> UN Committee Against Torture, Concluding Observations on the third to fifth periodic reports of the Bolivarian Republic of Venezuela, CAT/C/VEN/CO/3-4, 12 December, 2014, para. 16, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fVEN%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fVEN%2fCO%2f3-4&Lang=en)



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- c) some officials interviewed expressed concern about reprisals and stated that although they did not agree with the charges against Judge Afiuni, they were merely acting as instructed;
  - d) there were undue delays in the citation of witnesses to trial;
  - e) there were multiple inconsistencies in the testimony of witnesses of the accusation, including of officers of the Bolivarian National Intelligence Service.
- **July 2015-** The UN Working Group on Arbitrary Detention expressed concern over the continuous detention under house arrest of Judge Afiuni and considered her detention as a measure of reprisal, calling upon the Venezuelan government for her immediate release and provision of effective and adequate reparations.<sup>22</sup> In August 2015, UN Human Rights Committee showed concern over the case of Judge Afiuni and argued that the sexual assault and ill-treatment to which she was subjected while in detention were not promptly investigated.<sup>23</sup>
  - **30 November 2016-** Afiuni appeared before the Commission of Internal Policy at the National Assembly, where she explained how the irregularities committed throughout the criminal and disciplinary proceedings have violated her human rights and due process rights. Delsa Solórzano, President of such Commission, decided to refer Afiuni's case to the Plenary of the National Assembly so that it can be discussed during a plenary session and stated that her case shows "the flaws in the administration of justice, the judicial system and the penitentiary system" as well as that her case has been able to "show the horror that justice in the country has turned into".<sup>24</sup> The holding of such session is still to be confirmed.

Parallel disciplinary proceedings are taking place against Judge Afiuni. The IBAHRI has not directly monitored these proceedings. However, according to information received, Judge Afiuni has not been allowed access to the disciplinary file, nor given access to requested copies. She has been suspended from her profession for an indefinite period, without the right to remuneration.

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<sup>22</sup> Human Rights Council, Annual Report of the Working Group on Arbitrary Detention, A/HRC/32/34, 10 July 2015, para. 35, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/30/36](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/30/36)

<sup>23</sup> UN Human Rights Committee, Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela, CCPR/C/VEN/CO/4, 14 August 2015, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fVEN%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fVEN%2fCO%2f4&Lang=en)

<sup>24</sup> El Universal, *Comisión de Política Interior elevará a plenaria de la AN caso Afiuni*, 30 November 2016, [http://www.eluniversal.com/noticias/politica/comision-politica-interior-elevara-plenaria-caso-afiuni\\_629401](http://www.eluniversal.com/noticias/politica/comision-politica-interior-elevara-plenaria-caso-afiuni_629401)





Moreover, despite the fact that lawyers of her choice have defended Judge Afiuni, on 18 July 2017 she was assigned an ex officio lawyer to defend her.

### **2018: Continued trial suspensions**

- **31 January 2018-** The Public Prosecutor's Office requested to end the trial phase and to proceed to adjudication. However, Judge Bognanno rejected the request and argued for the need to hear further testimonies.
- **From 31 January to March 2018-** Hearings were scheduled every Friday. **From April to December 2018,** hearings were scheduled every 15 days. None of the hearings were carried out because the court was closed for an indefinite period of time.

In its 2018 Report on Venezuela the Inter-American Commission on Human Rights underlined that Judge Afiuni's arbitrary detention has had "a significant intimidating impact on judges who may fear being treated in the same way, even today". The report concluded that her case "illustrate[s] the grave crisis faced by the Judiciary in Venezuela with respect to its Independence" (see paragraphs 90-97 of the [report](#)).

- **December 2018-** The IBAHRI sent an [open letter](#) to Venezuela's President, Nicolás Maduro, denouncing the length of the proceedings and expressing deep regret for the lack of due process and fair trial guarantees, verified by the IBAHRI's trial observers during their monitoring of proceedings.

### **2019: Conviction**

- **8 February 2019-** Judge Afiuni sued the judge in charge of her case (Judge Manuel Bognanno) for the crime of denial of justice on the basis of the Venezuelan Corruption Law, because the judge had not held trials in more than one year.
- **21 February 2019-** Judge Afiuni was summoned to a hearing to be held the following day.
- **22 February 2019-** Judge Bognanno summarised previous hearings and denied a cross-examination previously requested by the defence. New prosecutors attended the hearing for the first time.





Judge Afiuni challenged the competence of the judge. The challenge was dismissed. Judge Afiuni then presented a written challenge. This challenge was later also dismissed by the judge for extemporaneous.

- **28 February 2019-** The IBAHRI published a [press release](#) denouncing the latest events.
- **15 March 2019 -** Judge Bognanno wanted to close the trial phase and proceed to sentencing, but prosecutors asked for a referral in order to be able to prepare their final trial allegations. Judge Afiuni also requested to postpone the sentence, as she had not had access to all of the trial records.

Judge Bognanno postponed the trial to Monday 18 March even if the prosecutors alleged they were unable to attend to the hearing on that day.

- **18 March 2019-** The Prosecution requested the referral of the hearing. Judge Bognanno agreed to delay the trial for one day. Judge Afiuni filed a writ of “amparo” (remedy for the protection of constitutional rights).
- **19 March 2019-** Judge Afiuni refused to attend the hearing arguing on the basis that the trial could not be concluded as there were pending appeals.
- **20 March 2019-** The Inter-American Commission on Human Rights’ 2018 Annual Report “drew attention to the delays and postponements that [stood] in the way of securing a decision with regard to the accusations levelled against [Judge Afiuni]”.<sup>25</sup>
- **21 March 2019-** The trial phase was declared closed. Judge Bognanno did not allow extra time for the parties to prepare their final pleadings. Prosecutors did not press any charge against Ms Afiuni.

Although Judge Bognanno recognized that there had been no bribe or acceptance of a bribe or gain by Ms Afiuni, which is a necessary element of the crime of corruption under Venezuelan Law, he proceeded to sentence Ms Afiuni to 5 years of prison for the crime of corruption.

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<sup>25</sup> Inter-American Commission on Human Rights, 2018 Annual Report, para 53, <http://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.4B.VE-en.pdf>



Judge Bognanno declared that a pecuniary sanction would be later determined. He established that the implementation of the prison penalty would be delayed until then, and that in the meantime Judge Afiuni would continue to be subject to restrictions to her freedom of movement and expression. Judge Afiuni was acquitted of all other charges.

## **2. Relevant national laws and developments**

- **Venezuelan Criminal [Code](#)**, 20 October 2000

### **Crime of corruption - Article 198**

Any official who, by his own or another's account, receives for some act of his functions, in cash or something else, some compensation that is not due or whose promise accept, will be punished with imprisonment of one to two months.

- **[Law Against Corruption](#)**, 7 April 2003

### **Corruption - Article 62**

*The public official who, by delaying or omitting any act of his functions, or by doing any act that is contrary to the duty that they impose, receives or promises money or other utility, either by himself or through another person, for himself or for another, shall be punished with imprisonment of three (3) to seven (7) years and a fine of up to fifty percent (50%) of the benefit received or promised.*

*The prison shall be punished from four (4) to eight (8) years and the fine of up to sixty percent (60%), if the conduct has had the effect to:*

*Confer public jobs, subsidies, pensions or honors, or have them agreed upon in contracts related to the administration to which the official belongs.*

*Favor or cause any damage to any of the parties in administrative proceedings or criminal, civil or any other type of trial.*

*If the person responsible for the conduct is a judge, and a conviction that restricts freedom exceeds six (6) months will result from his/her action, the penalty shall be five (5) to ten (10) years.*

*With the same penalty will be punished the interposed person from whom the public official would have been entitled to receive or be promised the*



*money or other utility, and the person who gives or promises the money or other utility indicated in this article.*

- On 12 June 2012, the **reform of the Organic Code of Criminal Procedure** is approved with retroactive effect, allowing criminal trials to be held without the accused being present.
- On 19 November 2014 a New **Law Against Corruption** is approved.

#### **Corruption - Article 89.**

*The civil servant or public official who delays or omits some act of its functions, or that to perform any that is contrary to duty same that they impose, receive or make promise of money or other utility, well by himself or through another person, for himself or for another, will be punished with Prison of three (3) years to seven (7) years and a fine of up to one hundred percent (100%) of the benefit received or promised. The prison shall be from four (4) years to eight (8) years and the fine of up to one hundred percent (100%) of the benefit received or promised, if the behavior has had effect:*

*1. Confer public jobs, subsidies, pensions or honors, or make them agree on contracts related to the administration to which it belongs the official or the official.*

*2. Favor or cause any damage or damage to any of the parties in administrative procedure or criminal trial, civil or any other nature.*

*If the person responsible for the conduct is a judge, and the act or omission results in a condemnatory sentence restricting freedom, the penalty of imprisonment shall be five (5) years to ten (10) years.*

*With the same penalty will be punished the interposed person used by the civil servant to receive or have promised the money or other utility, and the person who gives or promises the money u another utility indicated in this article.*

- April 2016: the Constitutional Chamber of the Supreme Court declared the **unconstitutionality of the Amnesty Law** that the opposition-controlled National Assembly managed to approve in March 2016 and that would release political prisoners.<sup>26</sup>

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<sup>26</sup> BBC, *Venezuela's Supreme Court overturns Amnesty bill*, April, 2016, <http://www.bbc.co.uk/news/world-latin-america-36021976>



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- January 2019: President Maduro announces a project of **Reform of the Law Against Corruption** to the National Constituent Assembly and the Supreme Court of Justice (*see [here](#) for further explanation*).<sup>27</sup>

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<sup>27</sup> Tele Sur, ¿En qué consiste la reforma Ley Anticorrupción de Venezuela?, 25 January 2019, <https://www.telesurtv.net/news/venezuela-reforma-ley-anticorrupcion-20190125-0011.html>