

Argentina

Judges and prosecutors continued to play a key role in the full restoration of powers to the judiciary, including the power to investigate and try past human rights violations, but the judiciary, especially in the provinces, continued to be subject to political influence. During the year, the Council of the Magistracy began its work. In 1999, some substantial steps were made towards overcoming impunity for past human rights violations.

The Republic of Argentina is a federal state composed of 23 provinces and one Federal District. The Constitution, most recently amended in 1994, provides for the separation of powers and the Rule of Law. The legislative power is exercised by a bicameral assembly whose lower house (Camara de Diputados) is elected directly while the upper house (Senado) represents the provinces. Half of the Chamber of Deputies is renewed every two years, as well as one third of the Senate. Executive power is vested in the President of the Republic who governs with the help of a cabinet of ministers appointed and dismissed at will by himself.

The last parliamentary and presidential elections were held on 24 October 1999, together with provincial elections in some of the provinces. Elections for governors of most of the provinces were held throughout the year. The results reflect a new political balance in the country. Mr. Fernando de la Rúa, Mayor of Buenos Aires and candidate of the centre-left coalition, Alliance, obtained 48.5 % of the vote against 38.1 % for Mr. Eduardo Duhalde of the ruling Justicialist Party. In parallel congressional elections to renew 130 of the 257 seats of the Chamber of Deputies, the triumphant Alliance won 63 of them, the Justicialists 50 and a third party, Action for the Republic, a further 9. With these results the Alliance becomes the primary political force in the legislature with 127 seats, only two seats short of the majority. However, the Senate is still controlled by the Justicialist Party, at least until the elections scheduled for the year 2001. President De la Rúa was sworn into office on 10 December.

The presidential and parliamentary elections were foreshadowed by controversy within the ruling Justicialist Party whose leader, the President Menen, wished to run for a third consecutive term. President Menen's bid was contested by Mr. Eduardo Duhalde, a senior leader in the party, and he eventually withdrew, allowing Duhalde to run on behalf of the ruling party. During the year a number of provincial elections for governors were carried out, in which the opposition coalition Alliance moved forward but the ruling party finally held 14 of the 24 governorships.

Human Rights Background

During the year under review there were instances of police killing and brutality that either went uninvestigated or did not result in prosecutions. In the few cases in which charges were brought, convictions have not been attained or have been very light.

In August 1999, the laws regarding police opening fire were relaxed by the government. The police may now shoot without prior verbal warning in some situations. In September 1999, in the context of a bank robbery that escalated into a hostage taking, the police opened fire indiscriminately on the car in which the bank robbers were driving with two hostages, killing the two hostages and one of the robbers. The second one was found hung up in his cell 24

hours later. The police have not explained satisfactorily what happened and there are suspicions that the prisoner was executed.

A number of cases of torture while in police detention occurred during the year. Some were investigated but no single conviction has been handed down. The cases have been attributed to the federal police, as well as the provincial police. There were also a number of other cases involving police brutality and torture in different provinces. In one case the victim, a youth, died after being tortured in detention. Other cases involved excessive use of force to repress public demonstrations and protests.

There were also problems relating to the treatment of immigrants. In February, President Menen introduced in parliament a bill aimed at stopping the flow of immigrants from neighbouring countries into Argentina. The bill imposed hard fines on those employing illegal immigrants and provided for automatic expulsion of any alien convicted to more than two years of prison.

Impunity for Past Human Rights Violations

During the year investigations into human rights violations which occurred during the period of military dictatorship between 1976-1983 continued. After the military rule had ended, criminal charges were filed against several perpetrators of human rights violations, and nine former members of the military junta were brought to trial, six of them being convicted with prison sentences. The majority, however, went unpunished as the Alfonsín government passed broad amnesty laws ("full stop" and "due obedience" laws) between 1986 and 1987. Later, the government of Mr. Carlos Menen pardoned those who had been convicted. The "full stop" and "due obedience" laws were repealed by parliament in 1998 but their effects were not annulled. It has been therefore understood that investigations into amnesty-covered human rights abuses can be carried out but they cannot lead to criminal convictions.

Investigating judge, Adolfo Bagnasco, and other judges continued investigations into cases of abduction of babies born to women held in detention and then disappeared, and the abduction of children from parents who had disappeared. The number of children taken may be up to 300 and the abductions are said to be part of an organised plan in the context of the dirty war. Several high-ranking officers were interrogated and arrested in early 1999 in connection with these crimes, in addition to those already arrested or investigated in 1998. In January 1999, Judge Bagnasco ordered the arrest of retired General Reynaldo Bignone and retired Vice-Admiral Rubén Oscar Franco. In December, another former General, Guillermo Suarez Mason, was also arrested. This brought the number of high-ranking officers arrested up to nine. A number of prosecutors working on these cases of child abduction have reportedly received death threats.

On 9 September 1999, a federal appeals court confirmed the arrest order of a number of high-ranking officers already detained. The court found that they have not been tried already for child abduction, that the cases do not fall under military jurisdiction and that the crimes were not subject to the Statute of Limitations. Some of the claimants had argued that they had been already tried in 1985 and then pardoned by President Menen in 1990. They had not, however, been tried for child abduction.

Judicial investigations into the fate of foreign citizens or Argentineans of foreign descent tortured, killed or disappeared during the dictatorship were also carried out by magistrates in

Spain, France, Italy and Germany. In November 1999, Judge Garzon of the Spanish National High Court ordered the commencement of criminal proceedings and issued an international arrest warrant against a number of former Argentinean officers. The order, unlike the former request for collaboration that the Menen administration had dismissed right away, was transmitted to the appropriate judicial authority. However, Judge Linares, who took up the international arrest warrant, sent it back to Judge Garzon for a more precise specification of the charges. Allegations of governmental pressure on the judge were heard in some circles. Judge Garzon's warrants related to 98 Argentinean nationals involved in the disappearance of more than 900 Spaniards and Argentineans of Spanish descent during the military dictatorship. The list included two former presidents (Mr. Videla and Mr. Galtieri) and Admiral Massera, a former member of the military junta. At least seven of those on Garzon's list are already in detention on charges of child abduction. However, in a setback for Judge Garzon's investigation, on 4 November 1999 the key witness in the case, Officer Alfredo Scilingo, retracted his testimony. On 30 December 1999, Judge Garzon reiterated his international arrest warrants.

The Inter-American Commission on Human Rights intervened in a number of cases, most notably on the bombing of the building of the Jewish association, AMIA,, and found that the delays in the investigation of the case amounted to a failure to provide justice. The Inter-American Commission on Human Rights' Rapporteur on Freedom of Expression expressed concern about rulings of the Supreme Court that limit freedom of expression in the country.

The Judiciary

The Constitution provides for an independent judiciary but in practice the judiciary is sometimes subject to political influence.

Structure

The judiciary in Argentina is organised into a federal and a provincial system. Article 5 of the Constitution provides that the provincial Constitution will be consistent with the principles and guarantees laid down in the federal Constitution. The federal judiciary is composed of a Supreme Court, which has jurisdiction over the entire country, and a varying number of Appeals Chambers, which have jurisdiction over judicial districts. There are also judges of first instance for criminal and civil matters.

There is also an Office of the Public Prosecutor and an Office of the Public Defender, both of which are part of the Public Ministry (Ministerio Publico). The Public Prosecutor's office, which enjoys autonomy and independence according to Article 120 of the Constitution, as amended in 1994, has the power to initiate criminal investigations and participate in the prosecution of offenders. However, its actual powers are limited by an old code of criminal procedure that lays down an inquisitorial model of criminal justice, limiting the role of the Public Prosecutor and giving the investigating judge (juez de instrucción) control of the investigation and of the trial as a whole. Debates in parliament to reform the code were stalled by Menen's government. However, with the advent of the De la Rúa administration, some observers have stressed the likelihood that the debates will go ahead.

An adversarial criminal system, with public trials focusing on oral hearings, was introduced in recent years in the province of Buenos Aires, which does not comprise the federal capital. The code of criminal procedure for the province of Buenos Aires was enacted in 1993 and

applies only to trials of non-serious offences, which are left to the jurisdiction of the provincial courts. During 1999, the first convictions in public trials under the new adversarial criminal procedure were handed down in the province, with mixed results.

The outcome of these trials and the functioning of the new system in the region were observed with much attention by the rest of the country which expects the introduction of a similar system in the near future. The Prosecutor-General declared his hope that very soon an adversarial system would be set up and that the prosecutors will be given authority over the investigation and prosecution of crimes, reserving the judicial issues for the judge.

The constitutional amendments of 1994 introduced the institution of the Council of the Magistracy (*Consejo de la Magistratura* - Article 114 of the Constitution). However, the implementing legislation took some time to be passed and it was not until 1999 that the Council actually started to work. The Council of the Magistracy is composed of 20 members elected by different constituencies: the judiciary, congress, lawyers associations, the executive branch and the academic and scientific community. They serve a period of four years, renewable only once. The Council has authority to appoint the Administrator-General of the judiciary, to initiate investigations and to bring judges before an impeachment jury (*jurado de enjuiciamiento*), to organise and oversee the education of the judiciary, to introduce training programmes and to select candidates for federal judges. The Council is divided into four sub-committees with four distinct functions: selection and training of magistrates, discipline, accusation and administration.

Each province of the Federation organises its own judiciary in accordance with its own constitution. The structure of the provincial judiciaries comprises a High Court, as the highest court in the province, and lower courts. They have jurisdiction over civil, criminal, labour and fiscal matters reserved for the provinces. In general, however, provincial courts are subject to the political and economic influence of powerful local families and political groups. This is illustrated by the irregular situation of the judiciary in the San Luis province (see *Attacks on Justice 1998*), which has persisted throughout 1999, and the collapse of local institutions, including the judiciary, in another province, Corrientes. The latter prompted the federal government to suspend local institutions and establish direct rule on the province, appointing an intervening committee to address the situation by the end of the year. The head of the intervening committee has so far suspended temporarily the security of tenure of all provincial judges and ordered a new process of evaluation of the High Tribunal of the Province.

Appointment and Security of Tenure

Changes in the appointment procedure took place with the introduction of the Council of the Magistracy. The old appointment system relied almost exclusively on the role of political constituencies. The new one assigns a key role to the Council which is more independent, though not totally free from political influence because of its own composition.

The President of the Republic has the power to appoint the justices of the Supreme Court with the consent of the Senate (Article 99 of the federal Constitution). The President also appoints judges for the lower federal courts upon the submission of a list of candidates by the Council of the Magistracy. All judges enjoy life tenure until the age of retirement.

Article 13 of Law 24.937 of the Council of the Magistracy elaborates a long procedure for the selection of candidates for judges other than Supreme Court justices, including pre-selection by a jury composed of judges, lawyers and law professors, and a favourable vote by the whole council before the candidate is included in the list to be submitted to the President. The selection of Supreme Court justices is entirely left to the discretion of the President who, if enjoying majority in congress, can actually exert an extraordinary power over the process that normally results in the appointment of those very close to the government.

Removal Procedures

The authority to remove lower courts' judges is exercised by the Council of the Magistracy. The Senate exercises this power in the case of Supreme Court justices. According to Article 110 of the federal Constitution both Supreme Court justices and lower court judges remain in their posts while on "good behaviour". Article 53 provides that Supreme Court justices can be accused before the Senate by the Chamber of Deputies on the grounds of having wrongly performed their functions or having committed a crime. The Senate will decide on the removal of the concerned justice by a two third majority (Article 59 Constitution).

The Law on the Council of the Magistracy grants this body the power to initiate investigations as well as to formulate charges against judges of the lower courts before the impeachment jury (*jurado de enjuiciamiento*). The removal will be decided by this jury, which is composed of representatives of the judiciary, the legislature and lawyers associations, after a procedure that affords due process to and respects the right of defence of the accused judge (Article 25 of Law 24.937). The final decision of the jury, however, cannot be challenged. Only a request to the jury to clarify its decision is permitted (Article 27).

During 1999, a number of federal judges were subjected to disciplinary proceedings and some of them were suspended or dismissed from their posts, mostly on charges of misconduct. Most of these proceedings were widely seen as consistent with constitutional and legal due process provisions, although in some cases, political considerations prevailed and may have resulted in retaliation against the judge for his or her opinion while carrying out his or her judicial functions.

This shift to the new system is considered by most observers as positive given that the old procedure for dismissal, of political impeachment before the Senate, was often ineffective, lengthy and politically influenced. It has been underlined that in ten years the Senate has dismissed only 7 judges out of several dozen requests.

Resources

The Council of the Magistracy is in charge of the resources of the judiciary. A constitutional provision guarantees that judges will receive a salary as compensation for their work, which cannot be reduced while they remain in their posts. The judiciary submits a budget which is sent to parliament for final approval after having been examined by the executive.

Cases

Ricardo Bustos Fierro (federal judge): Judge Bustos was suspended in his post by the Council of the Magistracy and sent to stand impeachment proceedings before a jury on the grounds of having decided manifestly in contradiction to the text of the law and the Constitution

(prevarication). Judge Bustos, as judge in the Cordoba province, had granted a petition by the ruling Justicialist Party to allow President Menen to participate in his party's primary elections to define the presidential candidate. The Constitution prohibits a third consecutive term in the presidency and Judge Bustos was accused of ruling against the text of the Constitution. Regardless of whether or not the charges against Judge Bustos are well-grounded, the case highlights the extent to which political considerations interfere with the disciplinary control to which all judges are subjected. The accusations and impeachment proceedings were first proposed and instigated by members of a wing opposed to Menen inside the Justicialist Party that did not want him to run for a third term. Once the accusations were formulated within the Council of the Magistracy and the judge was suspended pending his impeachment trial, political recriminations ensued inside the Justicialist party between Menen's supporters and those of Duhalde. The latter were accused of implementing a revenge by instigating the accusation inside the Council. Almost a third of the Council is appointed by parliament and among its members there is a significant number of deputies from the Justicialist Party.

Ana Maria Careaga (judge): Ms. Careaga was dismissed in December 1998 following an impeachment procedure that did not afford her due process of law (see Attacks on Justice 1998). As a result, and fearing for her security, she fled the country to Costa Rica where she was living for a year. A number of lawyers and human rights organisations lodged a habeas corpus petition in her favour. In December 1999, with the advent of the newly elected government, authorities in the interior ministry appointed her as a member of the High Tribunal that would intervene the judiciary in the Corrientes province. The appointment also put aside a decision barring Ms Careaga from any public posts for 15 years, rehabilitating her.

Adriana Gallo de Ellard (judge): Ms Gallo was dismissed from her post as a judge in San Luis Province and barred from public service for eight years in November 1998 (see Attacks on Justice 1998). During the year 1999 she has not been rehabilitated nor has she received any compensation for her arbitrary dismissal.

Maria Emma Prada (public prosecutor): Ms. Prada received death threats by phone during May 1999 while she was investigating a case of alleged torture of prisoners by three provincial police officers in Beccar. Investigations went on. No conviction has yet been secured.