

Bolivia

The main problems affecting the judiciary are related to long delays in trials and widespread corruption. The year was dominated by the election and appointment of justices of the Supreme Court and the Constitutional Tribunal, in addition to dozens of judges and prosecutors, to fill up the high number of posts left vacant for many years which were threatening to lead to the collapse of the judiciary.

Bolivia is a constitutional republic with a Constitution originally adopted in 1976 and amended several times, the last time being in 1995. The last amendment introduced important modifications involving the organisation and work of the judiciary. The Constitution provides for the separation of powers: executive, legislative and judicial. It also recognises and guarantees a comprehensive Bill of Rights to all citizens as reflected in international human rights instruments.

Executive power is exercised by the President of the Republic with the assistance of a Council of Ministers. The President is elected, together with a Vice-President, for a non-immediately renewable five-year term in office. Mr. Hugo Banzer, a former military ruler, was elected in 1997 in fair and transparent elections and remained in office during 1999. The legislature is made up of a bicameral assembly with a Chamber of Deputies and a Senate as an upper chamber. Judicial power is vested in the ordinary court system and the Constitutional Tribunal.

Local elections to appoint mayors in nearly 314 municipalities were held in December 1999. The ruling party, the Democratic Nationalist Action (Alianza Democrática Nacionalista - ADN) of President Banzer, won in the majority of the towns despite substantial progress made by the opposition.

Human Rights Background

The human rights situation in Bolivia has improved to some extent in recent years, although there remain some serious problems. A number of legal reforms that may improve the protection of human rights in the country have been implemented in recent years. At the beginning of 1999 a National Plan of Action for the Promotion and Protection of Human Rights was adopted by the government and constituted a sign of its commitment on the matter.

The most serious human rights violations linked to the functioning of the judiciary result from the practice of arbitrary arrest with long periods of detention without trial that may amount to instances of denial of justice. The reasons for this practice are complex and involve a lack of human resources in the judiciary and the offices of the Prosecutor and the Public Defender. There is also a lack of sufficient training among judges and prosecutors as well as auxiliary staff, the existence of old and cumbersome procedures and corruption at various levels.

There were instances of police brutality and torture which resulted in deaths, and the police also used excessive force in the repression of public demonstrations that resulted in scores of injured people and detentions.

Impunity also constitutes a problem in Bolivia and reflects the inability of the judiciary to effectively impart justice and the unwillingness of the government to instigate investigations. A number of outstanding past human rights violations remained without investigation, or if investigated, did not result in trials or convictions, despite the authorities' commitment in this regard. The government has pledged to produce a report on the violent clashes between coca growers and security forces in 1998 in the Chapare region. Similar clashes also occurred in 1997. Furthermore, the Attorney General was urged to finish his investigations into the 1996 massacre of mining workers in Amayapampa. All these events resulted in a number of deaths that still need to be investigated. The Inter-American Commission on Human Rights found, in its report on the events in the Chapare region, that the security forces' actions were excessive while repressing the movements. There were also a number of alleged abuses committed by the security forces' special unit to combat coca-growing and drug-trafficking.

Early in 1999 the authorities finally initiated judicial investigations into the 1981 disappearance and murder of left-wing leader Marcelo Quiroga which had already been investigated by parliament. The long delay in starting investigations was attributed to political unwillingness and the fear that once investigations and judicial proceedings were started, they would require witness's testimony that may involve persons close to the government.

During the year the Permanent Assembly for Human Rights (Asamblea Permanente por los Derechos Humanos - APDH), a well-respected non-governmental organisation (NGO), handed to Spanish investigating judge, Baltasar Garzon, a number of documents that allegedly implicate President Banzer's first government, between 1971 and 1978, in a co-ordinated plan to eliminate political opponents - known as "Operation Condor"- carried out by the then military regimes in the southern cone. Similarly, the decision to send to Judge Garzon a report prepared by the Chamber of Deputies about the disappearance and death of seven Bolivian citizens in Chile during the military rule of General Pinochet originated heated debate inside parliament and between parliament and the government.

Legal Reform

In March 1999 a new Code of Criminal Procedure was promulgated which will enter into force within two years, thus allowing a transitional period of time in which the necessary conditions for the full implementation of the code will be put into place. A National Commission on Implementation, with representatives from the three branches of government, was appointed to prepare the smooth transition from the old criminal procedure to the new one. The implementation activities will involve the training of judges, prosecutors and court officials, further legislative measures and the provision of adequate infrastructure.

The Code of Criminal Procedure is part of a broader programme of legal and judicial reform. By the year's end, there were a number of draft bills pending for discussion in parliament. One of them is a draft bill of a law on the public prosecution service. A draft of a new law concerning the judiciary has also been under consideration by the government and will be introduced and discussed in parliament in the near future.

The Judiciary

The Constitution provides for the independence of the judiciary. Article 116 of the Constitution states that magistrates and judges are independent and only subject to the

Constitution and the law. They cannot be dismissed except by a final sentence following a regular procedure. The Bolivian judiciary is characterised by its slowness and its lack of human and financial resources.

The year 1999 was the first year ever in which the full judicial system, as envisaged in the Constitution, began to function. The Council of the Judiciary, which took shape during 1998, started to work effectively in 1999. Another judicial institution, the Constitutional Tribunal, also started its work in the second part of 1999. The year 1999 also saw a renewed commitment on the part of the authorities towards a well-respected and efficient judiciary. In an unprecedented step, widely seen as positive, representatives of the three branches of government met together on 13 January 1999 and signed a document called "Commitment for a judiciary for the next century". In this agreement they established priorities regarding the judiciary and adopted a number of commitments, including a formal schedule to carry out the appointment of judges at all levels and the elaboration of a list of legislative measures to be discussed and passed in parliament to further reform the legal system and the judiciary.

Structure

The structure of the judiciary comprises a Supreme Court as the highest ordinary court in the country, that sits in the capital city, High Courts with jurisdiction over judicial districts and a system of lower courts. The lower court system is composed of Trial Courts (*juzgados de partido*), and Investigating Courts (*juzgados de instrucción*). There is also a system of specialised courts. Law 2026 of 27 October 1999 created a special court system to deal with matters related to children and adolescents. The structure and the tasks of the different courts is likely to change in the process of the legal reform.

The amendments to the Constitution approved in 1994 introduced two key institutions and placed them as part of the judiciary: a Constitutional Tribunal and a Council of the Judiciary (*Consejo de la Judicatura*), but these were not implemented until 1999. It took five years to enact the respective laws that draw the features of each institution and only in 1998 and 1999 could their membership be elected. The Constitutional Tribunal has jurisdiction over constitutional matters and the review of decisions on petitions of habeas corpus and amparo (Article 19 and 117 of the Constitution). The Council of the Judiciary is charged with the task of selecting candidates for appointment by parliament or by the Supreme Court, as well as exercising disciplinary power within the judiciary.

Appointment and Security of Tenure

All twelve Supreme Court justices are elected and appointed by parliament with a two third vote that implies negotiation and agreement between the political groups. They serve for a period of ten years and can be re-elected only after an equal period of ten years has elapsed (Article 117 of the Constitution). Seven justices were elected in March 1999, although the election was originally scheduled for February. Three of the posts were vacant since 1997, while the four other vacancies arose in 1998. The delay caused a bitter dispute between parliament and the Council of the Judiciary, each accusing the other of being responsible for the delay. The postponement of the elections for a month, from February to March, constituted the first setback in the implementation of the 13 January agreement establishing a schedule for election of judges at all levels (see above).

The election process of Supreme Court justices highlighted the extent to which these appointments are subject to political negotiations among the parliamentary groups so as to achieve the necessary two thirds majority. According to some observers, as the system stands it allows the "distribution" of posts in the Supreme Court among political groups. Be as it may, the election constituted the first step in a wider process of making a quasi-collapsed judiciary operative again, permitting the ensuing election and appointment of judges for lower courts by the now fully operative Supreme Court, sitting in plenary session.

Judges in the High Courts are appointed by the Supreme Court, sitting in plenary assembly, from a list of nominees prepared by the Council of the Judiciary. The same process is followed in regard to judges in the lower courts except that the elections are made by the High Courts upon the submission of a list by the Council of the Judiciary (Article 4 - Law on Organisation of the Judiciary, as amended in 1997). At the beginning of the year the authorities acknowledged that 40 % of the posts for judges in the High Courts were vacant. As to the number of vacant posts for lower court judges, there was no conclusive figures, but during the year different sources gave approximate numbers of around 200.

The appointment of Supreme Court justices paved the way for the appointment of the judges of the High Courts and lower courts. However, further clashes and misunderstandings between the Supreme Court and the Council of the Judiciary resulted in additional delays. For instance, in May 1999 the Supreme Court appointed two judges who were not on the list of nominees forwarded by the Council and this prompted a strong reaction from the latter which withheld further lists of nominees in protest. Later in June, the appointments of judges for some provinces were overshadowed by allegations that political considerations and nepotism prevailed in the Supreme Court's choice. As a result the Council decided to publish the lists of nominees forwarded to the court, ranked in accordance with objective and public criteria, in order to enhance the transparency of the process.

The Council of the Judiciary is composed of four counsellors, plus the President of the Supreme Court as an ex officio member, who also presides over the Council. The counsellors are appointed by parliament from lists of candidates submitted by the Supreme Court, the Constitutional Tribunal, the faculties of law and the Bar Associations. Any other fully qualified applicant can also apply for the post (Article 6 - Law of the Council of the Judiciary December 1997). The counsellors serve a ten-year period which is non renewable until an equal term has elapsed in between. The Council's powers comprise the implementation of planning and development policy within the judiciary, the administration of economic and financial resources, infrastructure and the management of human resources. It is also in charge of the selection of candidates and the preparation of lists of nominees to be forwarded to parliament or the Supreme Court for judicial appointments. Finally, its disciplinary powers allows the Council to dismiss those judges and court personnel responsible for having committed serious misconduct (Article 53 of the Constitution).

In 1999, however, the Council of the Judiciary suffered a serious setback in the exercise of its powers. On 18 October 1999 the newly created Constitutional Tribunal declared unconstitutional Article 53 of the Law of the Council of the Judiciary and Article 24 of the Law on the Organisation of the Judiciary, which grant the Council the power to dismiss judges for serious misconduct. In the Constitutional Tribunal's opinion these articles are inconsistent with Article 116 of the Constitution that guarantees that magistrates and judges cannot be dismissed without a prior final sentence. In the case at issue concerning a judge in the Cochabamba High Court who had been dismissed by the Council, the Tribunal found

that the final decision of the Council did not constitute a final sentence, and therefore, the judge in question had been dismissed without complying with all legal requirements. By the end of the year, the Council, together with other authorities and congressmen, were still trying to figure out how to restore the Council's disciplinary power to dismiss judges in cases of serious misconduct. The way that was envisaged for doing so was the passing of an interpretative law by parliament stating that decisions of the Council regarding dismissal are akin to final sentences in the sense of Article 116 of the Constitution.

The Attorney General is appointed by parliament, requiring two thirds of the vote of the whole membership. He or she serves for a period of ten years. The Attorney general is the head of the public prosecution service. Prosecutors are appointed by the lower house of parliament (Chamber of Deputies) upon the submission of lists of candidates by the Attorney General and the Council of the Judiciary. During 1999, a number of prosecutors were appointed but the process for the appointment, as in other cases, raised serious issues as to transparency and adequate guarantees for their independence.

On 20 March 1999, Senator Walter Soriano Lea Plaza, one of the leaders of the Nationalist Democratic Action (ADN), the major party in the ruling coalition, declared to the newspaper *El Diario* that the US Embassy in Bolivia "have a say" in the election of district prosecutors. According to Senator Soriano Lea, the US Embassy participates in the selection process with the aim of guaranteeing that none of the candidates are involved with drug-trafficking. This is done by virtue of existing agreements with the US that give them such a right. Under these agreements the US provides most of the funding for anti-drug programmes and apparently, this allows the US to participate in the selection of prosecutors, with an opinion that sometimes is, in Senator Soriano's words, "determinant".

Resources and Corruption

During the year judges' associations called for, several times, a salary increase and better distribution of resources within the judiciary. In January 1999, some High Court judges threatened to resign if their salary was not improved. In June 1999 judicial authorities declared to the press that authorities in the executive branch of government were withholding the transfer of ordinary financial resources to the judiciary for the past six months, putting the judicial services at risk of paralysis. The heads of the Supreme Court and the Council of the Judiciary met the executive authorities from whom they called for respect for the judiciary's autonomy to elaborate and administer its own budget.

Low salaries and poor infrastructure not only lead to the inadequate administration of their duties, but also make judges more susceptible to bribes. The extent of corruption within the judiciary was officially recognised by the Minister of Justice, Ana Maria Cortes, in declarations to the press in March. However, she clarified that "not all judges are corrupt". The Minister of Justice declared in response to a statement made by the US Ambassador saying that the Bolivian judiciary was unreliable.

In March 1999, a number of judges of the special courts for drug-trafficking matters (*juzgados de substancias controladas*) resigned and others were suspended by the Council of the Judiciary on charges of extortion and corruption (including illegal releases and the passing of light convictions), in the Santa Cruz province. Action by the Council was taken upon the request of the Vice-Minister of Social Defence. The six judges suspended in their posts faced disciplinary and criminal investigations.

Cases

Waldo Albarracin (lawyer): Mr. Albarracin is a lawyer and director of the Popular Assembly for Human Rights in Bolivia (APDHB), a well-respected human rights organisation that works nation-wide. In May 1997 he was kidnapped, tortured and threaten with death before being arrested by the judicial police, apparently in retaliation for his statements to a local newspaper about a massacre which had occurred sometime before. Since then his case has been under investigation but without concrete results. In May 1999, the Chamber of Deputies' commission in charge of investigating the case, decided to pass it, together with all the evidence gathered, to the ordinary courts for investigation and prosecution. According to the investigations carried out by the Chamber of Deputies, which are of a non-judicial character, those responsible for the attacks on Mr. Albarracin in 1997 are General Willy Arriaza, the Chief of Police; General Hernan Cortez Vargas, Operative Chief; Colonel Jaime Espindola, Deputy Director of the Judicial Police; Captain Filmann Urzagaste, police investigator; Captain Alberto Antezana, police officer; and the Prosecutor, Walter Blanco.

The case of Mr. Albarracin has already been the subject of a petition to the Inter-American Commission on Human Rights.