

Dominican Republic

Severe back log, ineffective methods, corruption and a lack of resources are the main problems affecting the Dominican judiciary. The majority of prison inmates are held without being tried or finally convicted, and there is also serious disrespect for the individual right of due process. Judicial remedies are often ineffective.

The Dominican Constitution dates from 1966 and was last amended in 1994. The constitutional reforms of 1994 introduced substantial changes that affect the judiciary and its independence, amongst them the establishment of a National Council of the Judiciary.

The Constitution provides for the division of power into three branches of government. The executive power is assumed by the President of the Republic, elected by universal suffrage every four years. The current president is Mr. Leonel Fernandez who was elected in the last presidential elections held on 16 May 1996 to replace Mr. Joaquin Balaguer, who had been holding power, won through successive and controversial re-elections, for a total of 22 years. Legislative power is vested in a bicameral assembly with a Senate and a Chamber of Deputies. The judicial power is allocated to a Supreme Court and a system of lower tribunals.

The ruling party, the National Liberation Party (PLN), holds a minority of seats in both chambers of parliament.

The government has initiated a programme of reform that embraces comprehensive legal and structural issues with the aim of making the state apparatus more effective and predictable. This also includes a programme of legal and judicial reform that began with the 1994 amendments to the Constitution. Since 1997 significant new legal codes have been enacted. These include the code on minors and a law on family violence.

Human Rights Background

The constitutional and legal system provide for an array of mechanisms and institutions to protect the human rights of the Dominican people. However, inefficiency, corruption, lack of sufficient resources and poor training originate frequent and sometimes serious human rights violations. In February 1999, the Dominican Republic accepted the compulsory jurisdiction of the Inter-American Court of Human Rights.

The use of special constitutional remedies to protect human rights, such as habeas corpus and amparo, is not effective in the country. The effectiveness of these remedies have been undermined by the attitude of the police who refuse to enforce judicial orders issued pursuant to these remedies. This has led to a serious problem as a good number of prisoners are held despite judicial orders for their release.

One of the most common violations that occurs in the Dominican Republic relates to the right to due process, including the right, if arrested, not to be held in incommunicado detention, and to have access to a lawyer during questioning by the police. Frequent reports said that these rights are not respected in practice. The police routinely deny detainees access to a phone to call relatives or an attorney. Further, when there is a lawyer, he or she is very often prevented from being present during the questioning of the suspect by the police. Instances of mistreatment and torture, as well as self-incrimination, have been denounced as a result of these practices.

By the end of the year the Inter-American Commission on Human Rights (IACHR) issued its final report on its visit to the country in June 1997. The report contains an evaluation of the human rights situation and the institutional mechanism for the protection of rights in the country. The report is updated until 1999 with information supplied by the Dominican Government.

The Judiciary

The judiciary (poder judicial) is regulated by the Constitution, the Organic Law of the Judicature and the Law on the Judicial Career.

The IACHR received, during its visit, information on the critical situation of the administration of justice, "finding a high percentage of lack of confidence in the population at large with respect to the independence and probity of the judicial system, as well as repeated complaints over the excessive delays in judicial proceedings" (paragraph 91). The findings and concerns of the IACHR will be further elaborated below.

Structure

The judiciary is composed of a Supreme Court of Justice (Suprema Corte de Justicia) at the top of the hierarchy, followed by Appeals Courts, Tribunals of First Instance and Justices of the Peace. There are also specialised courts for land, fiscal and labour matters. The National Council of the Magistracy (Consejo Nacional de la Magistratura) is also part of the judiciary, although it operates autonomously.

Following the 1994 amendments, the Supreme Court's membership comprises a minimum number of eleven justices (it currently numbers sixteen). The jurisdiction of the Supreme Court covers the entire country but is restricted to the review of sentences passed by the Appeals Courts and the control of the constitutionality of the laws (Article 67 of the Constitution). It also enjoys sweeping powers with regard to administration, organisation and appointment of judges and personnel in the judiciary (see below).

The Appeal Courts have jurisdiction over a judicial district as determined by law. There are at least nine Appeal Courts in the country (Article 68 Constitution). The law also determines the number of first instance judges and Justices of the Peace in the country.

Appointment and Security of Tenure

Justices of the Supreme Court are appointed, following the 1994 amendment to the Constitution, by the National Council of the Magistracy, which also has the power to appoint the Chief Justice and one or two alternates or substitutes. The judges at the Appeal Courts are appointed by the Supreme Court, which also appoints lower level judges.

The National Council of the Magistracy is made up of seven members: the President of the Republic who presides over it (or the Vice-President who can replace him), the Speakers of the Senate and of the Chamber of Deputies, the Chief Justice of the Supreme Court and another justice elected by his peers, and one senator and one member of the lower chamber, who are from a different political party to that of the Speakers, who are elected by their respective chambers (Article 64 paragraph 1 Constitution). The composition of the Council, as well as the powers given to it with regard to appointment of justices of the Supreme Court,

are aimed at providing a greater guarantee of autonomy and independence for the judiciary. Nonetheless, the predominance of political representations within the Council may jeopardise this aim in the future. So far, the work of the Council in appointing the first bench of the Supreme Court has reportedly been positive.

Article 63 paragraph III of the Constitution provides for all judges the guarantee of non-removal except for misconduct. Disciplinary measures against judges are provided for in Article 67.5 of the Constitution which grants to the Supreme Court disciplinary powers over all members of the judiciary, including the power of suspension and dismissal. Article 67 further grants to the Supreme Court wide powers not only with regard to appointment and discipline of judges at lower levels, but also in respect to the assignment of posts and salaries for judges and court staff. The Supreme Court can transfer temporarily or definitively, from one district to another at will, any judge of a lower level court.

Article 14 of the Law on the Judicial Career Service provides that: "When appointing the justices of the Supreme Court of Justice, the National Council of the Magistracy shall determine the period for which such appointments are made, which shall be no longer than four years from the date of appointment...". This provision was reportedly declared unconstitutional by the Supreme Court of Justice in August 1998.

The Concerns and Recommendations of the Inter-American Commission on Human Rights

In its report, the IACHR analysed the factors that negatively affect the judicial system in the Dominican Republic. In particular, it underlined the inefficiency of the system "insofar as it is not able to expeditiously and adequately resolve the cases that are brought before it" (paragraph 92). This is reflected in the growing backlog of cases pending before the courts and also in the fact that 85 % of all prisoners are held in preventive detention for long periods of time without their legal situation being judicially determined. Criminal trials take on average between two and three years before a verdict is rendered, and the pre-trial phase may take an additional year and a half.

In one of the largest prisons in the country, the IACHR found that more than 500 detainees had been held for longer than would have been the case had they been tried, convicted and given the maximum sentence. The IACHR received information that this situation was being addressed by the government by releasing those detainees who have been in preventive detention for a period already equal or longer than would have received if they were found guilty and given the maximum sentence for the crime of which they were accused. However, the IACHR observed that to benefit from this measure the detainees are required to serve the maximum sentence for the offence they are charged with, but without having been tried and convicted. The IACHR reminded that "these persons were never sentenced, their guilt was never shown, and it is their right to be released...", and that no measure has been taken to make reparation to those persons unduly held in prison for such a long period of time (paragraph 100).

Besides the inefficiency of the system that leads to blatant violations of human rights, the actual procedures before the courts diminish or violate the rights of the accused. The IACHR found that :

the possibility of preparing an adequate and timely defence from the very moment of the arrest is limited by many factors... The delays in the proceedings, the costs of hiring a private

attorney, and the ineffectiveness of the public defenders help foster the virtual defencelessness and inaccessibility to justice by the accused (paragraph 106).

Additional problems are presented by the fact that prisoners have no right to a public defender until trial, which affects negatively their rights in the pre-trial stage, and due to the limited application of remedies such as habeas corpus, their human rights. The latter situation is due to the use of the habeas corpus "by persons accused of particularly harmful crimes, such as drug-trafficking. It is in this context that some sectors assail the reputation of the judges, who are inclined to reject the admissibility of this constitutional action, even violating the rights of the accused, in order to safeguard their reputation" (paragraph 110).

Particularly troubling is the finding of the IACHR regarding instances in which judicial release orders pursuant to a recourse of habeas corpus are not enforced by the police. Prisoners held in detention despite a judicial order releasing them are called "contempt prisoners" (*presos desacatados*). During its visit to the country, the IACHR received information from a well-respected non-governmental organisation that those prisoners numbered at least 50.

In its report the IACHR also outlined the governmental efforts to modernise and improve the work of the judiciary. There is a Commissioner for Reform and Modernisation of the Justice System appointed with the mandate to co-ordinate the judicial reform programme. Among the first reforms carried out were a number of prison reform initiatives that are improving the situation of prisoners. The government has also appointed, as part of the reform of the justice system, special commissions for the reform of the Civil Code and the Code of Civil Procedure, as well as the Penal Code and the Code of Criminal Procedure.

Among the conclusions and recommendations given by the IACHR with regard to the Dominican judiciary are the following:

- The IACHR took note of the changes regarding the system of appointment of justices of the Supreme Court and recommended "that the judicial career service be strengthened in order to give judges job stability" (paragraph 128);
- That "the state quickly adopt measures to correct the chronic delays that characterise the administration of justice. In this regard, the state should pay special attention to the full application of Article 8 of the Dominican Constitution, pursuant to which detainees must be brought before the competent authority within 48 hours of their arrest..." (paragraph 130);
- "That the state put an end to the practice of preventive detention" (paragraph 131);
- "The Commission urges the state to institute measures to give priority to the right to legal advisory services by providing the assistance of public defenders, and to establish provisions that guarantee the detainees protection for due process and the right to liberty" (paragraph 132).