

## Panama

**The main problems affecting the judiciary are related to excessive delays in the commencement of trials, the extensive practice of pre-trial detention, political manipulation and corruption.**

The Constitution of the Republic of Panama was originally adopted in 1972 and successively amended in 1978, 1983 and 1994. The Constitution provides for the separation of powers between the executive, legislative and judicial branches of government. The executive power is vested in the President of the Republic. A legislative assembly holds legislative power and a court system holds judicial power.

Ms. Mireya Moscoso won the last presidential elections, held on 2 May 1999, becoming the first woman to hold the post in Panama's history. She ran for the Union for Panama, a coalition led by her own party, the Arnulfist Party (PA), and won 44.9% of the votes, against 37.6% for Mr. Martin Torrijos from the New Nation, a coalition led by the ruling Democratic Revolutionary Party (PRD). In parallel parliamentary elections for the 72-seat national legislature (Asamblea General) the parties forming the New Nation coalition won a majority with 46 seats. Ms. Moscoso was sworn into office on 01 September 1999.

After losing the general elections the ruling party engaged in far-reaching legislative changes in an attempt to limit the margin of manoeuvre of the future government of President Moscoso.

During the year 1999, Panama prepared for the handover of the Panama canal from United States control, to be carried out on 31 December 1999. In preparation for this event the US authorities closed, in May 1999, the airforce base from which anti-drug operations had been carried out, and another military base was returned to Panama in November 1999. The closing of these bases was made in accordance with the 1977 Panama Canal Treaties. On 31 December 1999, the US officially handed over sovereignty and control of the Panama canal and its adjacent zone to Panama. The event marked the end of a long period of military and effective US control over the canal zone since a treaty was signed between Panama and the US in 1903, whereby the US was given the right to build and operate the waterway and to exercise autonomous control over the adjacent zone where it installed a number of military bases. However, there subsist some fears about Panama's ability to ensure the security in the canal zone considering the fact that Panama itself has no army and the increasing threats posed by the guerrilla and paramilitary groups of neighbouring Colombia.

### Human Rights Background

There were instances of kidnapping, disappearance, torture and arbitrary detention in the country. The perpetrators have been identified as members of the Panamanian national police or the judicial police, and some non-state actors such as guerrillas or paramilitary groups coming from neighbouring Colombia.

There were also a number of disappeared persons or persons otherwise tortured or killed during the dictatorship between 1968 and 1989. Some of these cases were under investigation, although the actual convictions have been few.

Conditions inside prisons are very poor and even life-threatening. Overcrowding is severe, although the number of prisoners without conviction has been diminishing in recent years. Numerous inmates were injured or even killed during violent confrontations between groups of prisoners. Prisons are poorly managed and prison personnel lack sufficient training. Prison wardens, sometimes members of the national police, were pointed to as responsible for abuse against inmates.

The Constitution provides for the right of every person not to be detained without a warrant duly issued by a judge, and if detained to be brought before a judge within 24 hours. However, detainees are often held in detention longer than permitted before they are brought before a judge. The police preliminary investigations are also lengthy and the judges are reportedly flexible with regard to the respect of terms and deadlines. Detainees have the right to see an attorney during the investigations. This is hampered, however, by the fact that most are destitute and free legal aid schemes are insufficient. All these factors create a serious problem of long pre-trial detention. Of all prisoners approximately 60% are awaiting trial, and of those already standing trial only a small proportion have been already convicted.

The legislative assembly created, in 1996, an Office of the People's Defender (human rights ombudsman), that did not begin operating until January 1998 when it was provided with the necessary funding. Its powers were soon curtailed with regard to investigations into cases dealt with by the judiciary.

The judicial police helps the prosecutor in criminal investigations and with the enforcement of court's rulings, but it has become a semi-autonomous institution after a 1998 law shifted the power to appoint its Director General from the Attorney General to the Supreme Court. The judicial police, as well as the national police, are frequently accused of corruption and abuse of power. A 1994 anti-narcotics law allows prosecutors to wiretap suspects during investigations. The former Supreme Court Chief Justice, Arturo Hoyos, criticised the Attorney General for the wiretapping of a judge in March 1999.

On 3 September 1999, the incoming President Moscoso revoked a decree passed by her predecessor in August 1999, pardoning former governor Eduardo Herrera, who was being accused of abuse of authority, and repealed another decree pardoning 33 former collaborators of General Noriega.

Former military ruler of Panama, General Manuel A. Noriega, continued serving the 40-year prison sentence he received in Miami, USA. In March 1999, a judge in Miami reduced by ten years his prison term when he argued that he deserved credit for helping the USA to pursue its interests in Latin America while he was in power.

## **The Judiciary**

The judiciary (órgano judicial) in Panama is organised under the provisions of the Constitution and the Law of the Judiciary. There is also a law on judicial career. Article 207 states that judges and magistrates are independent while carrying out their duties and they are not subject except to the law and the Constitution, as well as to the decisions of higher courts in the exercise of second instance jurisdiction. However, in practice, the judiciary is often subject to political manipulation.

### *Structure*

The Panamanian judiciary is composed of an ordinary court system with a Supreme Court as the highest judicial authority, High Courts (Tribunal Superior) as appellate bodies, and District Courts (jueces de distrito) and Municipal Courts at the lowest level. There is also a specialised justice system with tribunals for labour, minors and family, and commercial matters. The Supreme Court, sitting in plenary session, exercises jurisdiction over constitutional matters, thus performing the role of a Constitutional Tribunal. There is also a Public Ministry (Ministerio Público - Office of the Public Prosecutor) headed by the Attorney General (Procurador General de la Nación).

The Supreme Court exerts jurisdiction over the entire country, whereas the High Courts exert jurisdiction over a limited area called a judicial district. There are five High Courts in the country, distributed among five judicial districts. District Courts, as well as Municipal Courts, are located within the judicial districts and their decisions can be appealed to the respective High Court.

The Supreme Court is organised into four different chambers for civil, criminal, administrative and business matters. In July 1999, the outgoing government of President Pérez Balladares passed into law a bill creating a fifth chamber to deal with appeals on matters of constitutional guarantees (Habeas Corpus and amparo). However, the incoming government of President Moscoso repealed this law in October 1999.

#### *Appointment and Security of Tenure*

The Supreme Court is comprised of 10 justices, including the President. All of them are appointed by the executive branch of government, meeting as a Cabinet Council (Article 195 of the Constitution), and with the consent of the legislative assembly, for a non-renewable period of 10 years. Together with the judges, the Cabinet Council also appoints an equal number of alternates. Article 200 of the Constitution establishes a system of renewal for Supreme Court judges: every two years two judges will be appointed to replace those who have already served 10 years. According to a 1998 law, Supreme Court judges should retire at the age of 75. This law was apparently designed to force Justice José Manuel Faundez to retire. The 82-years old judge had stayed in office despite the various failed attempts to impeach him in the legislative assembly. The law, which was challenged as unconstitutional during the year, was upheld by the Supreme Court.

The Attorney General is also appointed following the same system as for the Supreme Court justices.

Magistrates of high tribunals are appointed by the Supreme Court, and judges of lower courts are appointed by the high tribunals (Article 206 of the Constitution). Judges are selected through public competitive examinations by a commission composed of representatives from the Supreme Court or High Courts and the personnel department, which prepares a list of selected candidates that is submitted to the Supreme Court or respective High Court.

Justices of the Supreme Court are subject to impeachment procedures before the legislative assembly which can lead to dismissal for serious misconduct (Article 154 of the Constitution). This system, although effective in preventing interference from outside, permits, nevertheless, the control of lower court judges by the hierarchical superior which has many times undermined their independence.

### *Resources*

Article 210 of the Constitution stresses that salaries for Supreme Court judges should not be less than for ministers. Article 211 grants the judiciary and the Public Ministry the right to elaborate their respective budgets, to be submitted to the legislative assembly for discussion and approval. It also provides that both their budgets together shall not be less than 2% of the normal revenue of the central government.

Corruption is widespread within the judiciary however. The lower level judges' salaries are low and this fuels the practice of bribing within the magistracy and the court staff.

### *Judicial Reform Programme*

In May 1998 the Inter-American Development Bank approved a loan to Panama to carry out a judicial reform programme which started to be implemented in 1999 under the name "Programme of Improvement of the Judiciary". The programme, with a total cost of 27 million US dollars, of which 70% comes from the Inter-American Bank, comprises two sub-programmes: one for the judiciary and the Office of the Attorney General, and the second for the procurator of the administration. The control and the task of overseeing the implementation of the whole programme has been given to a Commission for the Improvement of the Justice Administration (COMAJ), composed of the President of the Supreme Court, the Attorney General and the procurator of the administration.

The objectives of the reform in respect to the judiciary and the office of the Attorney General are stated as follows: the guarantee of the due process of law, increasing public access to justice and the speeding up of proceedings. To achieve these objectives the programme has adopted a plan of action on six items: clearing the backlog of civil cases, strategic planning, training and judicial career, reorganisation and management of services, procedural reforms and enhancement of public access to justice, and citizen participation.

Although the programme has recently begun operating and it is too early to risk an evaluation, some voices have risen the issue of whether the objective of preserving and enhancing the independence and impartiality of judges and prosecutors has been incorporated into the programme as a valid and primary objective. According to some reports this has not been the case so far.

### *The Creation and Elimination of a Fifth Chamber of the Supreme Court*

On 23 July 1999, the legislative assembly passed into law a bill creating a fifth chamber within the Supreme Court (Law 32/99) with jurisdiction to review at last instance petitions of Habeas Corpus and amparo (which are special remedies to protect constitutional rights). In the following weeks the government, with the consent of the legislature, appointed three new judges for this new chamber of the Supreme Court, together with their alternates. The measure was criticised by the political opposition which had won the general elections in May and was waiting until September to assume control of government, on the grounds that it was for the new government to adopt such a measure. The opposition then accused President Pérez Balladares of making a political manoeuvre to take over control of the Supreme Court.

The new government of Ms. Mireya Moscoso revoked a number of measures taken by her predecessor, Mr. Pérez Balladares, among them the creation of the fifth chamber. On 24

October 1999, the legislative assembly passed Law N° 49 that repeals Law N° 32 of July 1999. Article 28 annuls the appointment of the three judges of the new chamber (see below). Critics have observed that the new law is unconstitutional since, according to the Constitution, Supreme Court judges duly appointed can only be dismissed by the legislature after an impeachment procedure is carried out. The affected judges have petitioned the Supreme Court itself to declare Law N° 49 unconstitutional and by the end of the year the issue was still being debated.

The creation and abrogation of the fifth chamber within the Supreme Court highlights the political manipulation of the judiciary in Panama. Both the incoming and outgoing governments have taken decisions on the basis of political calculations. In this way they have severely undermined the independence of the Supreme Court as well as the rights of the three judges duly and lawfully appointed to the posts.

### **Cases**

Elitza Cedeño, Oscar Ceville and Mariblanca Staff (judges in the Supreme Court): Judges Cedeño, Ceville and Staff were dismissed by application of Law 49 of October 1999 which eliminated the fifth chamber of the Supreme Court created just a few months before. Dismissal of judges of the Supreme Court through a law is not permitted by the Constitution or the laws of the land. The Constitution provides that justices can be dismissed only through impeachment proceedings in the legislative assembly.