

## Paraguay

**Paraguay experienced a year of political instability that served as a framework for continuous attacks on the judiciary, especially on members of the Supreme Court. During the year, the Inter-American Commission on Human Rights visited the country. The government has not yet put in place all the constitutional institutions necessary to guarantee all human rights in the country. The failure to appoint the People's Defender is one of the major factors that amount to the lack of protection of human rights.**

The Republic of Paraguay is a constitutional democracy. The Constitution adopted in 1992 establishes the Rule of Law and the division of power between three branches of government. The executive comprises the President of the Republic who serves a non-renewable term of five years. The President is the head of state and governs with the help of a Council of Ministers. The legislature is composed of a bicameral assembly (the Chamber of Deputies of 80 seats and the Senate of 45 seats). The Constitution provides for an independent judiciary.

In 1989 Paraguay ended a period of 35 years of dictatorial rule under Mr. Alfredo Stroessner. In the following years the country began an encouraging phase marked by the reconstruction of the state and the establishment of democracy and the Rule of Law. The 1992 Constitution was the result of initiatives taken during this time with the aim of restoring fundamental freedoms and human rights in the country through the creation of a number of institutions to ensure their adequate protection. The People's Defender (Defensor del Pueblo, a sort of human rights ombudsman), the Human Rights Commissions within the houses of parliament and a Human Rights General Directorate inside the Ministry of Justice, were some of the institutions resulting from the legal reforms undertaken. However, Paraguay inherited a heavy burden from its past: chronic political instability and the pending investigations into human rights abuses during the Stroessner dictatorship. The political instability lies at the heart of frequent violations of human rights and of a chronically weak, politically influenced and inefficient judiciary.

In 1996 General Lino Oviedo tried to carry out a coup d'etat against the government of then President Wasmosy. The coup failed because of strong opposition on the part of the international community, notably Paraguay's associates in the MERCOSUR trade agreement and the members of the Organisation of American States. An exceptional military court (tribunal militar extraordinario) convicted General Oviedo to a ten-year term in prison which was being served until a political ally of General Oviedo, Mr. Raul Cubas, came to power in August 1998. Given the special character of the military tribunal that convicted General Oviedo, he lodged a petition before the Inter-American Commission on Human Rights alleging a violation of his rights of due process. On 27 September 1999, the Inter-American Commission dismissed the petition.

President Cubas initiated a period of confrontation with parliament and the Supreme Court, mainly as a result of his attempts to free General Oviedo. As soon as he took office President Cubas issued a decree reducing General Oviedo's prison sentence to the period already served. Parliament opposed the move. In September 1998, the Supreme Court again confirmed the ten-year prison sentence for Oviedo, invalidating the ruling by a newly designated special military tribunal which had cleared General Oviedo. It also ordered a lower ordinary court to start proceedings against this special tribunal. In November 1999, the court declared admissible the petition from parliament to have the decree pardoning General Oviedo declared unconstitutional and on 2 December 1998 the court so declared the decree.

In February 1999 the court ordered President Cubas to send General Oviedo back to prison to finish serving the sentence for his failed coup d'etat in 1996, but President Cubas refused. The Attorney General, Anibal Cabrera, then determined that an impeachment proceeding against Mr. Cubas should be initiated in parliament. In response, the government escalated its campaign against those who opposed and resisted General Oviedo's coup by urging a military tribunal to speed up criminal proceedings against some of those military officers.

On 23 March 1999, a serious constitutional crisis originated when Vice-President Luis Maria Argaña, the main contender of President Cubas in the ruling party and General Oviedo's foe, was murdered. Opposition parties blamed then President Cubas and General Oviedo of being the "moral instigators" of the killing, an allegation they denied. People took to the streets demanding President Cubas' resignation and confronted supporters of Mr. Cubas and General Oviedo, while trade unions called for an indefinite strike. On 24 March 1999, the Chamber of Deputies decided to move forward the consideration of impeachment proceedings against President Cubas, which had been initiated at the beginning of the month on charges of disobeying the Supreme Court's ruling to send General Oviedo back to prison. Meanwhile, as demonstrations continued in the streets, police and General Oviedo's supporters opened fire against the demonstrators and killed at least 7 and injured dozens more. On 28 March 1999, hours before parliament's final vote on the impeachment against him, President Cubas resigned and fled the country to Brazil where he was granted political asylum. On his part General Oviedo also fled to Argentina where he also obtained asylum. Paraguay sought during the year, without success, his extradition to serve a prison term for his participation in the failed 1996 coup and to face further prosecution for recent events. In April 1999, the Senate voted to lift the immunity of Mr. Cubas so that he could stand trial for his alleged participation in the March events. An arrest warrant was issued following this decision of the Senate by an ordinary judge and a request for extradition was also sent to Brazil where President Cubas was enjoying asylum status.

After President Cubas's resignation parliament swore in the President of the Senate, Luis Gonzales Macchi, as the new President of the Republic. Mr. Gonzales Macchi immediately initiated talks with opposition groups and set up a government of "national unity". On 27 April 1999, the Supreme Court ruled confirming that President Gonzales Macchi could remain in office until 2003 when the constitutional term of resigned President Cubas would end. However, the court ordered fresh elections for the post of Vice-President left vacant by the killing of Mr. Luis Maria Argaña.

In November 1999, 14 military officers were arrested on charges of insubordination as persistent rumours of a failed coup d'etat circulated throughout the country and obliged President Gonzalez Macchi's early return from the Ibero-American summit.

### **Human rights Background**

Serious human rights violations occurred in Paraguay during 1999, as well as before. Most of these violations were not investigated and their perpetrators have not been brought to justice.

Some of the violations are related to the events of March 1999, mentioned above. In October 1999, the government confirmed the arrest of one of the alleged perpetrators of Vice-President Argaña's killing and the identification of two others. Another suspect had been killed in July by the police.

In July 1999, the Inter-American Commission on Human Rights carried out an on-site visit to the country and issued a preliminary report at the end of the mission.

The Inter-American Commission expressed concern at the failure on the part of the Paraguayan parliament to appoint the People's Defender created by the 1992 Constitution. Article 276 of the Constitution establishes the Office of the People's Defender and tasks it with the defence of human rights, the canalisation of people's claims and the protection of community interests. According to Article 277 the People's Defender is appointed by the Chamber of Deputies upon a proposal by the Senate.

The Inter-American Commission (ICHR) also observed that although Paraguay has enacted laws to investigate and punish those responsible for serious human rights violations during the long Stroessner dictatorship, as well as to compensate the victims or their relatives, these laws have hardly ever been put in practice, "creating in this way a serious situation that tends to characterise a factual impunity" (paragraph 34). The Commission praised Paraguay for the enactment of a law establishing that the Statute of Limitations does not apply to serious human rights violations. However, this and other laws have not yet been effectively enforced.

Only a few cases of alleged perpetrations of arbitrary detentions, torture and killings during the dictatorship have resulted in convictions with final judgements, although many more suspects are in detention waiting to be tried or are actually being tried. One of these few cases is that involving the torture and extra-judicial execution of Mr. Mario Schaerer in which a final sentence was issued by the Supreme Court in June 1999. In relation to reparations to victims or their relatives the ICHR found that the failure to implement the existing law is linked to the failure to appoint the People's Defender who is, according to the law, the one in charge of receiving the petitions and deciding thereon. With regard to impunity for past human rights violations the ICHR recommended that:

- The Paraguayan judiciary should adopt the necessary measures to speed up the trials involving human rights violations committed during the dictatorship and also to provide reparation to the victims or their relatives.
- An investigative commission, independent and impartial, to elaborate a report on the deaths, disappearances, torture and other human rights abuses committed during the time of the dictatorship should be created. The ICHR called upon all persons and institutions having relevant information on those abuses to hand them over to the authorities.

The ICHR also requested the authorities to institute a thorough investigation and prosecution of those responsible for the murder of Vice-President Argaña in March 1999 as well as for the deaths and injuring of people that resulted from the repression of the public demonstrations during the constitutional crisis of March.

The ICHR also found instances of arrest and detention of people by the police without a judicial order or other requirement of law. It stated that lengthy trial procedures and the lack of adequate legal counsel for the defendants caused an overpopulation in prisons with a high rate of prisoners without conviction.

The Commission hailed the positive attitude of Paraguay to settle amicably a number of individual cases brought before the Inter-American Commission, as well as its outstanding role in preparing and bringing to the consideration of the Organisation of American States a

draft resolution on "Human Rights Defenders in the Americas: Support to the Tasks Developed by Persons, Groups and Organisations of Civil Society for the Promotion and Protection of Human Rights in the Americas", which was adopted by the OAS General Assembly in June 1999.

The enactment of a new Penal Code and a Code of Criminal Procedure that introduces some basic elements of an adversarial system to replace the existing system, based mainly in written documents and the concentration of powers in the investigative judge (juez de instrucción) at all stages of the procedure, was also applauded by the ICHR. However, the ICHR regretted that some of the provisions of the new laws preclude any positive consequences for some time. It underlined Article 15 of Law 1444/99 regulating the transitional period to the new criminal system which postpones the appointment of new judges of penitentiary execution, who are those in charge of supervising the prison regime.

### **The Judiciary**

The Constitution defines the judiciary as its guardian. Article 248 guarantees the independence of the judiciary and provides that those interfering with such independence will be banned from holding public office for five years in addition to other civil and criminal responsibility incurred.

Although the Constitution guarantees the independence of the judiciary, this is frequently manipulated and interfered with for political purposes. In the context of the political confrontation between the then President Cubas and other branches of government that led to the constitutional crisis of March 1999, ad hoc military tribunals were set up. Supreme Court rulings were often ignored by the government of President Cubas and its members suffered harassment and physical attacks. The CIJL intervened before the Paraguayan Government when Supreme Court Justices Elixeno Ayala and Raul Sapena were attacked by unknown persons, presumably supporters of General Oviedo, on 27 January 1999. The perpetrators threw molotov cocktails and shot at the homes of the two magistrates only days after the Supreme Court ordered President Cubas to send the General back to jail.

### *Structure*

The Paraguayan judiciary comprises an ordinary court system, with the Supreme Court at the apex, high tribunals and lower courts, the Council of the Magistracy (Consejo de la Magistratura), the Public Ministry (Ministerio Público) and electoral tribunals. There is also a system of military justice.

The Supreme Court is composed of nine members and has jurisdiction over the whole country. It is organised into specialised chambers, one of them being the constitutional chamber that deals with petitions to declare laws unconstitutional and to review judicial decisions to ensure their consistency with the Constitution.

The Council of the Magistracy is the body charged with the selection and preparation of lists of nominees for appointment as justices of the Supreme Court and as judges and prosecutors at lower levels. It is composed of eight counsellors: one from the Supreme Court, one from the executive branch, a senator and a deputy, two lawyers elected by their peers and two professors of law, also elected by their peers. An impeachment jury for magistrates (Jurado de Enjuiciamiento de Magistrados), composed of two justices of the Supreme Court, two

from the Council of the Magistracy, two senators and two deputies, exercises disciplinary authority, including the power to dismiss judges and prosecutors.

### *Appointments and Security of Tenure*

All justices of the Supreme Court are appointed by the Senate with the consent of the executive branch of government from lists prepared and submitted by the Council of the Magistracy. The Council also prepares and submits to the Supreme Court lists of nominees for appointment as judges and prosecutors of lower tribunals.

Article 261 of the Constitution states that the justices of the Supreme Court can only be dismissed through an impeachment procedure before the Senate, upon an accusation brought by the Chamber of Deputies. The Senate should reach its decision with the favourable vote of two thirds of its membership (Article 225 of the Constitution). With regard to judges of lower courts, Article 252 guarantees them security of tenure during their term in office. Judges are appointed for renewable terms of five years subject to confirmation. Those who have been confirmed for two consecutive terms acquire life tenure until the age of retirement. According to the same article no judge can be transferred or promoted without his or her consent.

Judges and other magistrates can only be dismissed for the commission of an offence or misconduct in carrying out their duties by a decision of an impeachment jury. The Supreme Court has the power to suspend the questioned judge until a final decision is reached.

### *Resources*

The Constitution grants the judiciary autonomy in handling its budget and fixes at 3% of the national general budget the minimum amount to be allocated to it each year. However, the general budget needs to be approved by parliament and its execution is overseen by the Controller General.