

VENEZUELA

The judiciary remained in transition, with a process of reform under way. Appointments to the highest levels of the judiciary have been irregular and ninety per cent of the judges in Venezuela lack security of tenure. The changes introduced under the new Constitution with regard to the military judiciary have not been properly implemented. The legislative and the executive have decreased the budgetary allocation to the judiciary in contravention of the Constitution. In Portuguesa state, lawyers and prosecutors received death threats from a police "extermination squad" allegedly responsible for grave human rights violations.

BACKGROUND

The 1999 Constitution establishes that the Republic of Venezuela is a federal state and that its government is and always shall be representative, democratic, responsible and subject to change. Article 136 provides for the separation of powers including an "electoral" power and the "Citizen" branch of power, which is exercised by the Ombudsman, the Public Prosecutor, and the Internal-Affairs Office. The President, who is elected for a renewable six-year term, exercises executive power. National Legislative power is vested in a 165-seat National Assembly (*Asamblea Nacional*), whose members are elected for a five-year term. The administration of justice is reserved to a court system, which is endowed with functional, financial and administrative independence. Article 256 of the Constitution proscribes the right to association for judges.

In order to "re-legitimise" the authorities in the aftermath of the entry into force of the 1999 Constitution (see *Attacks on Justice 2000*), general elections were held on 30 July 2000. (The elections were to have taken place on 28 May 2000, but were postponed for technical reasons.) With heavy participation in the process, voters re-elected President Hugo Chávez Frías, with 59 per cent of the vote. His competitors, Francisco Arias Cárdenas and Claudio Fermín, received 38 per cent and 3 per cent respectively. President Chávez's supporters won a majority (92 seats) in Congress, although not the two-thirds majority required to pass most important pending legislation. His supporters also won half the governorships.

The Government sought to gain de facto control of organised labour. In December 2000, voters participated in elections for municipal and regional councils and voted on a questionable referendum on labour matters. The public "workers referendum" was to consider the "overhaul of union leadership" and the "suspension" of union leaders. The International Confederation of Free Trade Unions and the International Labour Organisation (ILO) considered the referendum to constitute a violation of freedom of association and an inappropriate government interference in organised labour issues. However, the Supreme Tribunal ruled in favour of moving on with the referendum. In the context of a poor turnout (23 per cent), approximately 65 percent of those citizens who voted approved the question. However, in October 2001, the Government's effort to get control of the Venezuela Workers' Federation failed, when its candidate appeared to come second in a disordered and controversial directorate election.

President Chávez also has continued to challenge the media and the Catholic Church and tensions have arisen with neighbouring countries. President Chávez remains fairly popular, although poll

ratings have recently been sliding, with economic troubles prompted by the decline in the price of oil, the main source of income of Venezuela. The electoral alliance that President Chávez forged in 1998 has collapsed, as its second largest member, the Movement to Socialism (MAS), has moved to the opposition. His Fifth Republic Movement is also divided. Furthermore, the army is increasingly restive, and, in the aftermath of the 11 September attacks, the United States seems to have expanded its scrutiny of President Chávez's peculiar foreign policy.

HUMAN RIGHTS BACKGROUND

During the period under review, reports emerged of disappearances and extrajudicial executions by security forces during rescue operations following the 1999 floods. A number of cases of torture and ill treatment were also alleged. Hundreds of persons fleeing political violence in Colombia were denied impartial hearings to determine whether they met the requirements for refugee status. Although there were some legal reforms that improved overcrowding in the prisons, prison conditions continued to be poor.

In April 2001, the United Nations Human Rights Committee (HRC) considered the third periodic report of Venezuela. The HRC expressed its satisfaction at the fact that the new Venezuelan Constitution gives international human rights instruments a status equal to that of the Constitution itself. However, it expressed concern at reports of disappearances, extrajudicial executions, torture and excessive use of force by the police and other security forces. The HRC also criticised conditions in prisons and other places of detention, treatment of persons seeking asylum or refuge (especially those from Colombia), reports of trafficking and violence against women, the interference by authorities in trade-union activities and threats to the independence of the judiciary (see below).

Impunity

By the end of 2000, only 40 of 300 cases of human rights abuses registered by national NGOs had been resolved as a consequence of judicial proceedings, and no judgement had been carried out with respect to some 200 cases of torture reported since 1995. In March 2000, a friendly settlement was reached between the Government and relatives of 41 persons killed by security forces in November 1992 in the Retén de Catia. This case had been presented before the Inter-American Commission of Human Rights. In April 2000, Congress approved a controversial law providing amnesty to persons who had been prosecuted, persecuted and sentenced for committing political offences from 1960 to 1992. This measure served to favour President Chávez's supporters during the 1992 coup attempt. However, the law applies only to those acts that did not constitute human rights violations.

THE JUDICIARY

The Government discontinued the judicial emergency proclaimed in 1999 in order to reform the judicial system (see *Attacks on Justice 2000*). This process had largely failed to restore the public's trust in the judiciary and improvement in the administration of justice. Approximately 300 judges have been suspended or dismissed at various levels and replaced by alternates. The Commission of Judicial Emergency, pursuant to its mandate from the Constitutional Assembly (the body that drafted the Constitution), dismantled the bodies in charge of the judiciary, with problematic results. Although the judicial emergency ended, significant attempts to reform the judicial system continued, with the purpose of facilitating the implementation of the constitutional changes

Despite the Government's pledge to take measures necessary to ensure the independence of the judiciary, the Government and the judiciary in fact acted to facilitate the executive's capacity to intervene in the judicial branch. The Constitutional Assembly established the Commission of Functioning and Restructuring of the Judicial Branch (*Comisión de Funcionamiento y Reestructuración del Poder Judicial*) with this purpose. This Commission had wide powers regarding suspension and dismissal of judges following a recommendation by the National Inspector of Tribunals. The Executive Directorate of the Judiciary assumed these powers once it was established in August 2000.

In its review of the periodic report of Venezuela, the Human Rights Committee declared that it was "particularly concerned at the situation of the judiciary in Venezuela, which is still undergoing reform. An extended reform process threatens the independence of the judiciary, given the possibility that judges could be removed as a result of the performance of their duties, an infringement of article 2, paragraph 3, and article 14 of the Covenant. Another cause for concern is the lack of information on the effects of the reform process to date and the absence of a date for that process to come to an end". The Committee added that "the reform of the judiciary must not continue. The State party should furnish information on the number of judges removed during the process, the reasons for their removal, and the procedure followed". The Committee's concern about the independence of the judiciary extended to the information, delivered by the delegation, that "article 275 of the Constitution empowers the National Ethics Council (*Consejo Moral Republicano*) comprising the Ombudsman, the Attorney-General and the Comptroller-General to issue warnings to judges, even those of the Supreme Court, and impose sanctions if those warnings are not heeded".

Structure

The judicial system is headed by the Supreme Tribunal (*Tribunal Supremo de Justicia*), which is composed of six chambers. One chamber considers constitutional issues and has the power to declare federal or state laws invalid on the grounds of unconstitutionality, and to adjudicate conflicts of competence between the constitutional branches. The judiciary is also constituted of an Appeals Courts, first instance tribunals and municipal courts.

The Constitutional Chamber of the Supreme Tribunal Chamber, in its ruling on an *amparo* petition, decided to postpone the general elections scheduled for May 2000. The Constitutional Chamber expressed reservations that the electoral counting system could fail to reflect the popular will. Due to this decision, the elections were held on 30 July 2000. The Constitutional Chamber also took substantial and controversial steps towards clarifying the parameters of its own powers. The Constitutional Chamber held that any citizen could file a petition, which would have as its purpose to receive interpretation of several articles of the Constitution. The petitioner would have to demonstrate an individual interest in respect of an active case.

Administration

According to article 267 of the Constitution, the Supreme Tribunal is responsible for the administration of the judicial branch, including the elaboration and execution of its budget and oversight of the courts. These functions are exercised by the Supreme Tribunal through a body responsible to it, the recently created Executive Directorate of the Judiciary (*Dirección Ejecutiva de la Magistratura*). In September 2000, the former Council of the Judiciary was dissolved and its functions were passed to the Supreme Tribunal.

The compilation of statistics, for instance concerning judicial workloads, has been hampered by the existence of parallel judicial administrations during the “transitional” period. The Executive Directorate of the Judiciary only has statistics that correspond to the last trimester of the year 2000, and only five of the 24 judicial divisions into which the country is divided provided statistical information. Eighty per cent of the tribunals did not submit reports on their activities during the period of “judicial emergency”.

Appointment of Supreme Tribunal justices

The appointment of the highest authorities within the judiciary has been irregular and unconstitutional, posing serious problems in respect of the independence of the judiciary.

According to article 264 of the Constitution, the 20 members of the Supreme Tribunal are appointed for a non-renewable 12-year period. A Nominations Committee, the “citizen power”, and the Congress are to play a role in the selection procedure. Although the referendum that approved the new Constitution took place in mid-December 1999, the new Constitution only came into force at the end of the month. The Constitutional Assembly took advantage of this state of limbo and continued to appoint judges, contravening procedures that it had approved along with the main authorities within the judiciary, including the members of the Supreme Tribunal.

In November 2000 Congress, repeating the actions of the Constitutional Assembly, waived the constitutional procedure for the appointment of Supreme Tribunal Justices by blocking the role of the civil society (Citizen Power) and designating itself the “representatives” of the citizen power. The intentions of the Congress became clearer when members of the executive stated that to attain appointment to a high judicial post, the concerned individual should be identified with the “process” i.e. be part of the President’s movement. This procedure constituted a gross attack on the independence of the judiciary. The Supreme Tribunal upheld this circumvention of the Constitution, referring to the existence of the “transitional” period. The Tribunal also eased the criteria and requirements for the appointment of Supreme Tribunal justices. The Tribunal held that the appointment of justices should correspond with their performance during the time they exercised that post, without taking into account the other criteria provided in the Constitution (Ruling No 1561-12,122.00). Thus, there was not only an inappropriate interference on the judiciary from the legislative, but the judiciary accepted and endorsed as legitimate such interference. Although the appointments were carried out through special procedures ostensibly resulting from the exigencies of the “transitional period”, the legislature did not limit the term of such appointments pending the approval of the new legal framework of the judiciary. On the contrary, the mandates of these justices were to last the constitutional 12-year term.

Judicial career

According to article 255 of the Constitution, the entry and promotion of judges to the judicial career as well as the evaluation of judicial officers, is to be carried out by the Supreme Tribunal through the Executive Directorate of the Judiciary. However, there is as yet no implementing legislation, and currently the Rules of Evaluation and Contests to Enter and Stay in the Judiciary, established on 13 March 2000 by the Commission of Functioning and Restructuring of the Judiciary, are in force. Since August 2000 they have been applied by the Executive Directorate of the Judiciary.

During the period under review, controversial dismissals and appointments within the judiciary continued. Up to now no reliable statistics are available concerning this process. It seems that many provisional judges continued to carry out a large portion of the work of the judiciary, without

foreseeable measures to tackle the problem. The Executive Directorate of the Judiciary recognised that by September 2001 approximately 90 per cent of the judges were not working on a permanent basis.

Contests were held to fill the vacancies in the judicial branch beginning in November 2000. In Monagas state, two judges appointed were said to be relatives of the director of the local office of internal Affairs and another two appointed judges reportedly were relatives of the President of the state legislature. There have also been irregularities in the appointment of military justice officers. In August 2001, the Supreme Tribunal decided to suspend the contests to appoint military judges based on allegations that serious irregularities and conflicts of interests arose during the selection procedure.

Regarding the dismissal, suspension and appointment of judges, the performance of the Executive Directorate of the Judiciary, operating since August 2000, and its predecessors (the Commission of judicial Emergency, and the Commission of Functioning and Restructuring of the Judiciary) have been problematic. The extended reform process has affected the independence of the judiciary by undermining the security of tenure of judges. Furthermore, there is no reliable available information on the effects of the reform process to date, and no deadline for this process has been established.

Resources

Article 254 of the Constitution provides for the financial independence of the judiciary, and requires that the budget for the judicial branch be not less than two per cent of the national budget. However, the judiciary's budget corresponds to approximately a 0,75 per cent of the ordinary budget. The executive has failed to respect the provisions of the Organic Law of the Judiciary, according to which the budget proposal elaborated by the judicial branch should be passed to Congress without changes. In October 2000, the Executive Directorate of the Judiciary revealed that the Executive had modified the judiciary's budget before submitting it to Congress. Finally Congress only allocated a 40 percent of the sum initially asked by the judicial branch.

The administration within the judiciary has also been worrying. In January 2001, the Executive Directorate of the Judiciary pointed out that resources initially directed to improving the infrastructure for the courts were allocated to other projects due to the delay in carrying out the necessary administrative procedures.

Regarding the judicial reform process with international aid, the 2001 report of the Internal Affairs Office stated that the Project of Infrastructure Support of the Judiciary (PIAPJ) lacked adequate planning and presented undue delays. The Venezuelan Government was to have invested an equivalent amount to match the US\$ 30 million loan by the World Bank allocated in 1994. The Venezuelan resources of the project were supposed to be directed toward building new locations for tribunals throughout the country. However, this portion of the resources has not yet been allocated, as a result of which the infrastructure has weakened further. Despite the deficient administration of the resources given by the World Bank (only 65 per cent of the project has been executed) and the two-year delay in the implementation of the PIAPJ, the World Bank is considering prolongation of the credit for an additional year and provision of an additional US\$ 20 million dollars. On a positive note, the Modernisation Project of the Supreme Tribunal, also with support from the World Bank, was developed according to the planned timetable and is expected to reduce workload problems.

Workload of public defenders

According to the Autonomous System of Public Defence (SDP), ordinary public defenders each handle between 100 and 300 cases, which clearly shows that such a function, essential for the fulfilment of the right to a fair trial, is not being carried out properly. During the period under review, the number of public defenders increased from 366 to 517 at the national level. While this modest increase is positive, according to the SDP, some additional 1,050 public defenders are required. Moreover, the procedure for selecting these defenders is not transparent and no law exists to regulate their appointment. The shortfall is reported to be even more severe in the public defence system for juvenile offenders.

MILITARY JUSTICE

Although the 1999 Constitution (Article 29) provides for a limited military jurisdiction in compliance with international standards, during the period under review there were new cases of civilians and of military personnel accused of committing common crimes being tried before military courts. In December 2000, three individuals were arrested for allegedly possessing propaganda material from Colombian armed opposition groups in Táchira state. The three men were released, but judicial proceeding continued in military courts.

In January 2001, Mr. Pablo Aure was arrested in Carabobo state, after having sent a letter to a national newspaper in which he criticised the armed forces. A prosecution under the military judiciary ensued. Although he was released following substantial pressure from other State-officers and the public, the proceedings continued. The Attorney General's Office challenged the military court's jurisdiction over this case, and concluded that due to the civilian character of the accused, the case should have been passed to the civilian judiciary. As *Attacks on Justice* went to press, a Supreme Chamber's ruling on the legality of the detention and the violation of the right to expression was pending.

Also in January 2001, the military judiciary assumed jurisdiction over Lieutenant Alejandro Sicat, who was accused of human rights violations that caused the death of a soldier. The case was handled by the military judiciary even though its jurisdiction was challenged during the process and, according to the law, once a dispute has arisen regarding jurisdictional competency, the proceedings should be suspended. Lieut. Sicat was judged and sentenced by the military court without the jurisdictional conflict having been resolved. The Attorney General has requested the invalidation of the trial and the 16-year sentence imposed on Lieut. Sicat.

THE COUNTER-REFORM OF THE CODE OF CRIMINAL PROCEDURE

During the period under review, the Code of Criminal Procedure was frequently criticised as being inadequate for countering crime and as a source of impunity. According to PROVEA and the Attorney General, this was an inadequate response to the legitimate concerns posed by the criminality that Venezuela suffers.

A new reform to the Code was presented, which attempted to harden some measures relating to detentions in flagrancy and to providing longer terms for prosecutors to carry out investigations. The reforms also eliminated jury trials, as they were said to be cumbersome and it was impossible to provide security for the jurors. According to some specialists, the reform, instead of strengthening

the Public Ministry, has propitiated its inefficiency and undermined some of the defendant's guarantees. One positive aspect of the reform is that the new provisions broaden the guarantees and rights of victims.

In a related development, efforts were under way to re-establish non-judicial mechanisms for detaining suspected criminals. The Minister of National Security proposed a law intended to revive the repealed "law of vagabonds and criminals" (*ley de maleantes y vagos*), and at the time *Attacks on Justice* went to press, a similar bill was being proposed by a member of the legislature of Miranda state. Adoption of such legislation would constitute a serious setback, as this law had in the past been used to detain persons without any evidence whatsoever.

THREATS AGAINST THE JUDICIARY, LAWYERS AND PROSECUTORS IN PORTUGUESA STATE

During the period under review, an "extermination group", made up of police officers of the Portuguesa State Police, was exposed, following several extrajudicial executions that took place in this state. In May 2001, prosecutors inspected the headquarters of the state police. The search prompted the opening of 62 cases on more than 100 extrajudicial executions involving 19 police officers. The investigation also determined that the police officers who were detained left the police detention centre with the authorisation of the director of the state police and proceeded to kill one of the witness against them. During the investigation, the extermination group circulated pamphlets containing death threats against lawyers, politicians and 12 alleged delinquents, 11 of whom had been already murdered. The Attorney General asked for protection for forty witnesses, victims and prosecutors, some of whom had previously been threatened. In September 2001, searches carried out on the premises of the state police of Portuguesa uncovered numerous irregularities, including that four of the six detained police officers were not in their cells. Despite these extraordinary irregularities, the Portuguesa State Police Commander continues to be on duty and no disciplinary or administrative measures have been taken in the case.

CASES

Rene Molina {National Inspector of Tribunals} Mr. René Molina was appointed as National Inspector of Tribunals. In his position, he was mandated to assure the removal of judges who were not fulfilling their duties. In July 2000, the President of the National Legislative Commission (the interim legislative body that existed during the period after the new Constitution was approved and before the new Congress was elected) denounced him publicly for abusing his powers and for producing a new "judicial tribe". After a strong debate, Mr. Molina had to resign.

Pablo Aure {Lawyer} In January 2000, Mr. Aure was arrested in Carabobo state, after having sent a letter to a national newspaper in which he criticised the armed forces. A trial started within the military judiciary against Mr. Aure. Although Mr. Aure was released, the proceedings continued. The Attorney General's Office challenged the military court's jurisdiction over this case, and concluded that due to the civilian character of the accused, the case should have been passed to the civilian judiciary.