

ATTACKS ON JUSTICE - ARGENTINA

Highlights

The Constitution grants the President broad powers with regard to the appointment of judges to the Supreme Court of Justice and federal courts, and for many years the judiciary has been regarded as subordinate to the executive. At provincial level, complaints of executive interference in the judiciary are also frequent. Recent judicial reforms adopted mainly during 2003 as a result of two presidential decrees, and new legislation adopted in some provinces in response to a general lack of confidence in the justice system, have ensured that there is greater consultation and outside scrutiny with regard to appointments to the Supreme Court and the prosecution service. Some provinces have adopted similar reforms ensuring that there is a degree of scrutiny in the appointment of judges. Also during 2003, impeachment proceedings initiated by Congress resulted in the removal or resignation of four Supreme Court justices who were generally perceived as being subordinate to the government of former President Carlos Menem (1989-1999). During 2004, concern about increasing crime rates and lack of security has become one of the most debated judicial reform issues. On 14 June 2005, the notorious amnesty laws (the Full Stop and Due Obedience Laws) were declared unconstitutional and null and void by the Supreme Court of Argentina. This ruling should pave the way for the prosecution of perpetrators of serious human rights violations during the military dictatorship (1976-1983).

BACKGROUND

On 20 December 2001, after four years of economic stagnation that led to one of the most serious economic, political and social crises in Argentina's history and following the killing of several people during street protests and rioting, President Fernando de la Rúa resigned from office. On 1 January 2002, Peronist Senator Eduardo Duhalde was elected by Congress as caretaker President. Within days, the government devalued the local currency (*peso*), ending ten years of parity with the US dollar. In July 2002, President Duhalde called for early elections to take place in 2003 and, on 25 May 2003, Nestor Kirchner was sworn in as the new democratically-elected President.

President Kirchner took bold action to overhaul discredited institutions, including dismissing high-ranking military and police officers, tightening the Government's grip on state-owned banks and pension funds and forcing the resignation of the President of the Supreme Court (*Presidente de la Corte Suprema de Justicia*) as well as the resignation or removal of three other Supreme Court justices who were widely regarded as subordinate to the previous executive headed by Carlos Menem.

The economic crisis led to an alarming increase in the percentage of the population living below the poverty line.¹ Though there has been a relative economic recovery, poverty has remained extremely high. This has led to a number of public protests during the reporting period. A rise in crime and greater public insecurity have also been reported. The degree of violence used by the police has increased, with frequent reports of torture and ill-treatment, in particular cruel, inhuman and degrading treatment, in prisons and detention centres. In 2004, the United Nations Committee Against Torture concluded that torture and the inhuman treatment of prisoners and detainees is now “committed in a widespread and habitual manner”².

THE JUDICIARY

Judicial reform

Amendments to the procedure for nominating justices to the Supreme Court and appointing judges

After President Kirchner took office in May 2003, impeachment proceedings were opened by Congress against a number of Supreme Court justices (see **Cases** below). While the proceedings against the Supreme Court justices were still pending, on 19 June 2003 President Kirchner issued *Decree 222/03*³ regulating the power to appoint Supreme Court justices conferred on the President under article 99, paragraph 4 of the Constitution, and established a new procedure that limits this power.

The decree establishes that all vacancies have to be publicly advertised and candidates have to hand in a sworn statement (*declaración jurada*) of all their assets. Moreover, under article 6 of the decree, any person, non-governmental organization, institution or professional association may submit comments on, or objections to, the appointment of the candidate or candidates proposed to the Ministry of Justice, Security and Human Rights (*Ministerio de Justicia, Seguridad y Derechos Humanos*). After that, the President has the final decision whether or not to appoint the candidate or candidates in question. However, *Decree 222/03* does have some shortcomings in that the President has no legal obligation to comment publicly on his decision.

President Kirchner continued the process of judicial reform on 13 August 2003 by issuing *Decree 588/03*⁴ which established a transparent procedure for the appointment of staff (prosecutors and public defenders) from the prosecution service (*Ministerio Público*) and judges sitting in the lower courts. It extended the provisions of Decree 222 to apply to the appointment of judges and prosecutors.

¹ <http://news.bbc.co.uk/1/hi/business/1981054.stm>;

http://www.comerciosa.org/Argentina/en/Content_pages/Inflation_December_2004.asp

² UN Committee Against Torture, *Conclusions and Recommendations: Argentina*, CAT/C/CR/33/1, 10 December 2004, para. 6(a), <http://www1.umn.edu/humanrts/cat/observations/argentina2004.html>

³ <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=86247>

⁴ See <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=87634>

A new Supreme Court justice, Eugenio Zaffaroni, was appointed on 31 October 2003 in accordance with the new procedure. Though the new procedure was generally welcomed, there was some criticism regarding certain aspects of its implementation.

Debate around these reforms has continued, including suggestions that the number of Supreme Court justices be reduced from nine to seven, that all judges and justices should submit sworn statements of their assets and pay income tax, and that the jurisdiction of the Supreme Court be limited. In Argentina, there are two ways to access the Supreme Court. The first is by means of an ordinary appeal. In this instance, where the State is a direct party, the case is heard by the Supreme Court when the sum claimed from the State exceeds a certain amount. The *Welfare Support Law* (“*Ley de Solidaridad Previsional*”) provides another channel for reaching the Supreme Court in cases relating to retirement pensions. This was amended by Congress on 4 April 2005 by means of *Law 26,025*, following a great deal of criticism from civil society. The second route to the Supreme Court is currently by means of extraordinary appeals in cases where federal law has been breached. It is felt that the jurisdiction of the court in this area has gone too far and non-governmental organizations have asked for it to be curbed.

It has also been suggested that serious consideration be given to a more in-depth reform of the prosecution service (*Ministerio Público*). Reform of the federal court system is another pending issue.

Some provinces, including Buenos Aires, Córdoba, La Rioja and the Federal Capital (*Ciudad Autónoma de Buenos Aires*), have decided to institute provincial reforms similar to those carried out at federal level in order to ensure greater transparency and participation by civil society in the appointment of judges. Some of these have not yet had a positive effect and a number of reforms are still pending.

Though the process of judicial reform in Argentina is by no means complete, many of the measures adopted so far must be welcomed in so far as they seek to ensure that civil society exercises control over, and participates in, the appointment of judges.

Strategic Plan on Justice and Security 2004-2007 (Plan Estratégico de Justicia y Seguridad)

In response to public demands for government action against crime and an increased sense of insecurity, on 19 April 2004 the government launched a program called the “Strategic Plan on Justice and Security 2004-2007” (*Plan Estratégico de Justicia y Seguridad*). The plan consisted of reforms to the justice, security, political and prison sectors.

In relation to justice, the plan provided for the unification of all federal courts in the city of Buenos Aires, a measure that would have resulted in the abolition of the local justice system in the city, and the establishment of trial by jury for crimes carrying sentences in excess of six years’ imprisonment.⁵

⁵ Trial by jury has existed in the Argentine Constitution since 1853 but until now a jury system has never been set up. In the 1994 Constitution it is provided for under articles 24, 75.12 and 118.

However, the plan proved to be controversial and was severely criticized by judges, prosecutors and members of civil society.⁶

In the end, many of the proposed measures did not enter into law and much of the plan was abandoned. The question of whether to establish trial by jury is still being debated.

Independence of the judiciary

Since the government of President Carlos Menem (1989-1999), there has been a widespread perception that the judiciary, at federal level as well as in some provinces, lacks independence and impartiality.⁷ On 6 August 2002, a delegation from the Inter-American Commission on Human Rights (IACHR) stressed, during a visit to Argentina, that “[r]epresentatives of civil society organizations and the state expressed scepticism and pessimism at the scale of the endemic weaknesses that plague the judiciary”, a situation which has led to a serious lack of trust in the judiciary on the part of the Argentine public.⁸

Complaints concerning lack of judicial independence and impartiality are common in many provinces of Argentina. In some provinces, there have been serious persistent allegations that the executive interferes in the work of the judiciary (see **Cases** below).

There have been ongoing allegations over many years that the Santa Cruz Provincial Supreme Court has links with the executive. The number of judges sitting on the Provincial Supreme Court was increased from three to five and the executive was able to designate its own majority.

The situation in the province of San Luis is possibly one of the worst in the country. Governor of San Luis Province Dr Alberto Rodriguez Saa, who took office in 2003, passed a law declaring that the entire provincial legislation was no longer effective and that each law had to be ratified, one by one, by means of new legislation. This gave the executive the opportunity to change the judicial structure of the province since the old laws included the procedural codes and almost all legislation governing the operation of the judiciary and other associated bodies. The Governor also appointed four of the five justices sitting in the Provincial Supreme Court. In addition, a number of judges from the lower courts publicly stated that the Governor had asked them to sign an undated resignation letter as a condition for their appointment. Moreover, a complaint about an alleged scheme by the Governor and his brother Alberto (the former Governor) to remove independent judges from the courts has been lodged with the Inter-American Commission on Human Rights. During 2005 the Federal Senate was considering a bill that would authorize federal intervention in the province.

⁶ See Centro de Estudios Legales y Sociales, *El CELS cuestiona los lineamientos generales del Plan Estratégico de Justicia y Seguridad presentado por el Gobierno*, Buenos Aires, May 2004, http://www.iniciativas.org.ar/boletines/04_docs/CELS.doc

⁷ See “A Court for Democracy” (*Una Corte para la Democracia*), *Asociación por los Derechos Civiles, el Centro de Estudios Legales y Sociales (CELS), Fundación Poder Ciudadano, la Fundación Ambiente y Recursos Naturales (FARN), Instituto de Estudios Comparados en Ciencias Penales y Sociales (INECIP) and Unión de Usuarios y Consumidores*.

⁸ See IACHR Press Release: <http://www.cidh.org/Comunicados/English/2002/Press33.02.htm>

In Tierra del Fuego Province, a controversial procedure compelling judges to take early retirement was in blatant breach of their security of tenure. The process for appointing and removing judges also failed to respect or guarantee the independence of the judiciary. The Provincial Judicial Council (*Consejo Provincial de la Magistratura*), which is responsible for appointing judges within Tierra del Fuego Province, does not appoint candidates on the basis of their qualifications or following an examination process but on subjective grounds, meaning that voting can be arbitrary since the members of the Council do not have to justify their choice. On 4 December 2002, nine new judges were appointed by the Tierra del Fuego Judicial Council using this procedure. Despite the persistent criticism, there appears to be no political will to institute a serious reform of the judiciary.

In Neuquén, the prosecutor (Dr. Mendaña) was reportedly subjected to political persecution after he brought charges against the Governor for corruption. Proceedings to have the prosecutor removed from office are still open at the time of writing. The panel of judges conducting the proceedings is widely viewed as not being impartial.

Cases

Impeachment proceedings against Supreme Court justices

Numerous complaints from various sectors of civil society led to the institution by Congress of two separate impeachment proceedings (*Juicios Políticos*) against Supreme Court justices during 2002 and 2003. The Supreme Court was widely viewed as lacking impartiality and independence due to the close relationship it had with former President Carlos Menem while he was in power (1989 - 1999) and had been accused of endorsing some of the alleged acts of corruption committed by his government.

The first impeachment was initiated in February 2002 against all nine Supreme Court justices and ended, after much political wrangling, in October 2002 without Congress having obtained the required two-thirds majority for the removal of any of the justices.

On taking office in May 2003, President Kirchner sought to change the composition of the Supreme Court. On 4 May 2003, President Kirchner publicly requested that Congress remove one or more of the Supreme Court justices from office. The Chamber of Deputies (*Cámara de Diputados*) acted immediately and opened impeachment proceedings against the President of the Supreme Court, Justice Julio Nazareno, on 22 charges relating to the “improper discharge of duties”. On 27 June 2003, before the public hearing could be held in the Senate, the Supreme Court President resigned his post.

Impeachment proceedings were subsequently opened by the Chamber of Deputies against other Supreme Court justices. In July 2003, Justice Eduardo Moliné O’Connor was accused of “improper discharge of duties”, violating the principle of judicial independence and committing fraud against the State. During the February 2002 impeachment proceedings, 67 charges had already been brought against Justice Eduardo Moliné O’Connor. In October 2003 he was suspended by the Senate

(*Cámara de Senadores*). He was eventually found guilty on two of the nine charges and removed from office in December 2003. In August 2003 the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists (CIJL/ICJ) had urged the Government of Argentina to ensure that Justice Moliné O'Connor received a fair hearing in his impeachment proceedings.⁹ The Supreme Court agreed to review his case and found that the trial conducted by the Senate had complied with due process.

During the second half of 2003, two further impeachment proceedings were opened against two other Supreme Court justices. On 23 October 2003, Justice Guillermo López resigned from his post when the lower house of Congress was on the verge of bringing formal charges against him. On 6 November 2003, Justice Adolfo Vázquez was indicted on fifteen charges and, in September 2004, faced with his probable removal, he resigned.

Justice Belluscio resigned from his post in July 2005 and at present Justice Boggiano is being impeached by the Chamber of Deputies on the same charges that resulted in the removal of Justice Moliné O'Connor.

Interference from the Executive

In **June 2003**, *Poder Ciudadano*, a non-governmental foundation, reported that corruption, personal influence and interference in the judiciary by the provincial executive was frequent in various provinces, including **La Rioja, Salta, San Luis and Santa Cruz**.

In Santa Cruz Province, the removal in 1995 of the then Attorney-General, Eduardo Sosa, raised serious concerns. His removal followed the adoption by the province of Law 2,404 which amended the structure of the judiciary, creating two separate posts: prosecuting officer (*agente fiscal*) before the Higher Provincial Court of Justice (*Superior Tribunal de Justicia Provincial*) and defender of the poor, absent and incapable (*Defensor de pobres, ausentes e incapaces*). Neither of these posts was offered to Eduardo Sosa, raising concerns about the security of tenure of judges. Both the Higher Provincial Court of Justice for Santa Cruz Province and the Supreme Court of Argentina found article 9 of Law 2,404 to be unconstitutional. Although the Supreme Court ordered that Eduardo Sosa be re-instated, this has not yet been done. In 2003, the Higher Provincial Court of Justice took steps to open proceedings requiring compliance with the order.

There were repeated allegations that the Santa Cruz Provincial Supreme Court had links with the provincial executive. In **November 2002**, the President of the Judicial Council (*Consejo de la Magistratura*), Dr Laura Patricia Ballester, resigned after allegedly coming under pressure from the executive to make "executive-friendly" appointments.

In the province of San Luis, the case of Judges Adriana Gallo, Ana María Careaga and Silvia Maluf de Cristin, all of whom were removed from their posts, remains unresolved and is currently before the Inter-American Commission on Human Rights.

⁹ See http://www.icj.org/news.php3?id_article=2996&lang=en

In 1997, Judges Maluf and Careaga signed a letter supporting a public position taken by the San Luis Provincial Bar Association (*Colegio Público de Abogados*), alleging that the situation of the judiciary in the province was getting worse due to increasing interference from the executive. The provincial prosecutor opened proceedings to have both judges removed before the provincial *Jurado de Enjuiciamiento*, a panel of judges who rule on procedural matters and whose independence has been questioned by a number of organizations in Argentina. On 1 November 2002, the panel decided to remove Judge Maluf from office. During **2004**, both the executive and legislature continued to put pressure on the judiciary. In 2005, the Federal Senate was considering intervening in the province because of the absence of an independent judiciary.

On 1 April 2004, in the province of Santiago del Estero, control of the judiciary by the executive, among other things, led to federal intervention in the province that lasted until 1 April 2005. At that point, a democratically-elected Governor took office and issued an emergency decree appointing five justices to the Higher Provincial Court, which then proceeded to appoint judges to the lower courts. At the time of writing, a process of constitutional reform, including the establishment of a new Judicial Council (*Consejo de la Magistratura*) which will confirm the appointments already made, is under way.

Before the Federal Government intervened in Santiago del Estero, the control exerted by local political groups over the judiciary was highlighted by the flaws in the investigations into the murders of Leila Bashier Nazar and Patricia Villalba. From the first, the victims' families claimed that the investigations were being hindered because of the perpetrators' links to local politicians. In the face of the numerous irregularities that subsequently came to light and the fact that a large number of cases of human rights violations remained unpunished, the possibility of a federal intervention began to be considered.

In August 2003, the Inter-American Commission on Human Rights carried out an on-site visit to the province and expressed its profound concern over the deterioration of the rule of law there.

The federal intervention covered all three provincial branches of government, with the exception of city officials. Pablo Lanusse was appointed administrator. As far as the judiciary was concerned, the intervention meant that provincial magistrates were subject to reconfirmation (*en comisión*). Independent jurists were appointed to the most important posts, such as those in the Higher Court of Justice (*Superior Tribunal de Justicia*), for the duration of the intervention.

In December 2003, immediately after taking office, the executive of Tucumán province issued a decree abolishing the provincial Judicial Advisory Council (*Consejo Asesor de la Magistratura*) which by law advises on the appointment of judges. This provoked an immediate reaction from both the Tucumán Bar Association (*Colegio de Abogados de Tucumán*) and the Argentine Federation of Bar Associations (*Federación Argentina de Colegios de Abogados*).

In the province of Neuquén, the case of an independent prosecutor who accused the Governor of corruption is being considered by a panel of judges who are widely

viewed as not being impartial in proceedings which fail to comply with due process guarantees. The proceedings are not public and the accused (the prosecutor) is not allowed to be present in the courtroom.

LAWYERS

A delegation from the Inter-American Commission on Human Rights (IACHR) to Argentina expressed its concern on 6 August 2002 “at the information received in the weeks before and after its visit regarding threats to human rights defenders, as well as against attorneys, community leaders, activists and witnesses”.¹⁰

PROSECUTORS

Amendments to the procedures for appointing prosecutors (*fiscales*), judges and public defenders (*defensores públicos*)

President Kirchner continued with the process of judicial reform by issuing *Decree 588/03* of 13 August 2003,¹¹ establishing a transparent appointment procedure for staff from the Attorney-General’s Office and prosecution service (*Ministerio Público*).

This decree extended the provisions of *Decree 222/03* to apply to the appointment of the Attorney-General (*Procurador General de la Nación*) and Defender General (*Defensor General de la Nación*) as well as to the appointment of prosecutors (*fiscales*) and defenders (*defensores oficiales*) in the lower courts.

In 2005, the Defender General, Miguel Angel Romero, resigned when the Chamber of Deputies was looking into accusations that he had ‘improperly discharged’ his duties. He was also heavily questioned by other parts of the prosecution service (*Ministerio Público*) and by civil society.

ACCESS TO JUSTICE

Impunity

As described in *Attacks on Justice 2002*, in 2001 the *Full Stop Law* (*Law 23,492*) and *Due Obedience Law* (*Law 23,521*) were found to be unconstitutional and invalid for the first time in the case of "Simón, Julio, Del Cerro, Juan Antonio - abduction of 10-year-old juveniles" (“*Simon, Julio, Del Cerro, Juan Antonio s/sustracción de menores de 10 años*”). In the period under review, challenges to these laws were brought before the Argentinean courts in a number of different cases, calling for them to be declared null and void once and for all. Finally, on 14 June 2005, in a landmark ruling that reaffirmed the State’s obligation to effectively prosecute and try alleged

¹⁰ See IACHR Press Release: <http://www.cidh.org/Comunicados/English/2002/Press33.02.htm>

¹¹ See <http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=87634>

perpetrators of gross human right violations, the Supreme Court declared them to be unconstitutional.

On 14 August 2002, in judgment No. 586/02P delivered in proceedings entitled "Public Prosecutor's Office - filing of complaint, Case No. 311/02", Federal Judge Reinaldo Rubén Rodríguez had declared article 1 of the *Full Stop Law* and articles 1, 3 and 4 of the *Due Obedience Law* to be invalid and unconstitutional. The case concerned an alleged offence of unlawful imprisonment, doubly aggravated by being accompanied by violence and threats, in combination with an offence of aggravated torture, which were all committed under military rule in Santa Fe province.

The former Public Prosecutor at national level (*Procurador General de la Nación*), Nicolás Becerra, confirmed the rulings handed down by federal judges, affirming that the Full Stop and Due Obedience Laws were invalid and unconstitutional. In an opinion dated 29 August 2002 and addressed to the Supreme Court, he concurred with Judge Gabriel Cavallo's ruling that both laws were null and void and unconstitutional. In the opinion, the Public Prosecutor emphasized that "the duty not to impede the investigation and punishment of gross human rights violations, like all obligations derived from international treaties and other sources of international law, is incumbent not only on the Legislature but on all branches of government and therefore requires that the prosecution service and the Judiciary do not validate actions taken by other branches of government who are infringing them." In a later ruling dated September 2002, Federal Judge Claudio Bonadio also declared the Full Stop and Due Obedience Laws to be null and void.

In March 2003, Federal Judge Carlos Skidelsky again declared article 1 of the *Full Stop Law* and articles 1, 3 and 4 of the *Due Obedience Law* to be unconstitutional and irrevocably null and void, affirming "the unconstitutionality of Laws No. 23,492 and 23,521 and the invalidity of their application in the present case". He pointed out that "these laws mean that the deaths of thousands of Argentine citizens and foreigners over a specific period of time (1976 to 1983), and for that period only, will go completely unpunished and, as a consequence, create a special category of people who have no right to the protection of that most sacred of possessions, human life. In other words, they allow a perverse inequality to be enshrined in law". Judge Skidelsky's judgment relates to proceedings concerning the enforced disappearance of persons, torture and aggravated murder in a case known as the "Margarita Belén massacre" which took place in December 1976 (Margarita Belén, Chaco Province). He also stated that domestic courts must ensure that international standards on human rights protection that are binding on Argentina are implemented throughout the country. The judge stressed, moreover, that the case in question must be examined "not only on the basis of domestic criminal law but also in the light of the human rights treaties that have been ratified by Argentina."

In August 2003, the Full Stop and Due Obedience Laws were annulled by the Argentine Senate. The annulment was confirmed later that month by the Chamber of Deputies.

The final decision of the Supreme Court, rendered on 14 June 2005 by a majority of 7-1, confirmed the unconstitutionality of the two laws and declared them to be null and void. The Court was ruling in a case brought in 2000 by the Centre for Legal and

Social Studies (CELS), an Argentinean NGO and ICJ affiliate, concerning the forced disappearance and torture of José Poblete y Gertrudis Hlaczik de Poblete and the abduction of their daughter Claudia Victoria Poblete, then aged 8 months. In a ruling on this case in March 2001, Judge Gabriel Cavallo had declared the two amnesty laws to be unconstitutional and null and void. In November of that same year, a Federal court (*Sala Segunda de la Cámara Federal*) had unanimously confirmed this decision.

Other measures to fight impunity adopted during the period under review include President Kirchner's repeal in July 2003 of *Decree No. 1581-01* which had been issued by former President Fernando de la Rúa in December 2001. The decree prohibited the extradition of persons allegedly implicated in human rights violations committed during the period of military government.¹²

LEGAL REFORMS DURING THE PERIOD

19 June 2003: *Presidential Decree 222*, regulating the power to appoint Supreme Court justices, conferred on the President under article 99, paragraph 4 of the Constitution, and establishing a new procedure limiting this power.

13 August 2003: *Presidential Decree 588*, establishing a more transparent procedure for appointing the staff of the prosecution service (*Ministerio Público*) and judges in the lower courts by extending application of the provisions of *Decree 222* concerning the appointment of officials to those bodies to apply to them.

At provincial level:

21 April 2004: *Buenos Aires Decree 735/04* limiting the Governor's powers with regard to the appointment of Provincial Supreme Court justices, the Public Prosecutor (*procurador*) and Deputy Public Prosecutor (*subprocurador*).

¹² See <http://hrw.org/press/2003/07/kirchner071703.htm>

General Country Information

a. Legal system overview

1. The rule of law and independence of the judiciary

The Federal Constitution, most recently amended in 1994, provides for a constitutional, representative and federal republic. Each of the 23 Argentinean provinces and the city of Buenos Aires has its own constitution. The President, who is elected by popular vote for a four-year term and allowed to stand for re-election only for one additional period, exercises federal executive power. The President is chief of State, head of the Government and responsible for administration.

A bicameral Congress exercises federal legislative power. The Chamber of Deputies is made up of 257 deputies, who are elected for a renewable four-year term. Half of the Chamber of Deputies is replaced every two years. The 72-seat Senate is elected for a six-year term. Every two years, one third of the Senate is renewed. Those elected to the Senate in 2001 were assigned at random to serve either a two-year, four-year or full six-year term, initiating a system of rotation under which one third of the body is renewed every two years. Justice is dispensed through a court system

b. The judiciary

1. Judicial Structure

The judiciary is organized as a federal and provincial system. Provincial constitutions must comply with the principles and guarantees provided in the federal Constitution. The federal judiciary is composed of a Supreme Court, which exercises jurisdiction throughout the territory, and courts of appeal that exercise jurisdiction over specific judicial districts. There are also courts of first instance for criminal, civil and other matters. Each province of the Federation organizes its judiciary in accordance with its own constitution. The structure of the provincial judiciaries comprises a High Court, as the highest court in the province, and lower courts. These have jurisdiction over civil, criminal, labour and fiscal matters within the province in question.

- The Office of the Public Prosecutor and the Office of the Public Defender (*Ministerio Público*)

The Office of the Public Prosecutor (*Ministerio Público Fiscal*) and the Office of the Public Defender (*Ministerio Público de la Defensa*) are part of the prosecution service (*Ministerio Público*), which is an independent body with both functional and financial autonomy. The Public Prosecutor's Office has the power to start criminal investigations and to participate in the prosecution of offenders. However, its powers are restricted by a *Code of Criminal Procedure* that follows an inquisitorial system of criminal justice, limiting the role of the Public Prosecutor and giving the examining magistrate (*juez de instrucción*) control over the investigation stage. Article 196 of the

Code of Criminal Procedure states that the examining magistrate may delegate this function to the prosecutor.

Some legal reforms that sought to implement a more adversarial system were introduced. *Law 24,826* establishes that, in cases in which an individual is captured *in flagrante delicto* and where in principle it is not mandatory to apply preventive detention measures, the prosecutor shall take charge of the investigation (amending article 353 bis of the *Code of Criminal Procedure*). *Law 25,409* stipulates that prosecutors shall be responsible for investigating cases in which the identity of the perpetrator is unknown (amending article 196 of the *Code of Criminal Procedure*).

The Office of the Public Prosecutor is made up of prosecutors who discharge their duties before the courts at different levels. The national executive, following ratification by two thirds of the Senate, appoints the Attorney-General. Other general prosecutors are appointed by the President (after a period of public consultation as established in *Decree 588/03*) and ratified by the Senate from a list of three candidates compiled by the Attorney-General following a public competition. The Office of the Public Defender has the duty to exercise public defence and carry out all actions that seek to defend and protect human rights. It is headed by the Defender General. The Defender General and the officers from this agency are appointed in the same way as their counterparts in the Office of the Public Prosecutor.

Members of the prosecution service enjoy security of tenure as long as they observe good conduct and they are under 75 years of age. Procedures for removing the Attorney-General and the Defender General must comply with articles 53 and 59 of the Constitution (impeachment). Other officers may only be removed by a panel of judges (*Tribunal de Enjuiciamiento*) on grounds of poor performance or grave negligence or for offences stipulated in *Law 24,946*.

2. The Judicial Council

The 1994 constitutional amendments provided for the establishment of a Judicial Council (*Consejo de la Magistratura*). In 1999, the implementing legislation was passed and in the same year the Council began its work. The Judicial Council is made up of 20 members elected by different constituencies: the judiciary, Congress, lawyers' associations, the executive branch of government and the academic and scientific community. They serve for a period of four years, renewable only once. The Council has authority to appoint the Administrator-General of the judiciary, to initiate investigations and to bring judges before an impeachment panel (*jurado de enjuiciamiento*), to organize and oversee the training of judges, to introduce training programmes and to select candidates to be federal judges. The Council is divided into four sub-committees with four distinct functions: the selection and training of judges, discipline, impeachment and administration.

The Judicial Council is responsible for the resources of the judiciary. A constitutional provision guarantees that judges will receive a salary in return for their work and this cannot be reduced as long as they remain in post. The judiciary submits a budget that is sent to Congress for final approval after having been examined by the executive.

Some provinces have set up Judicial Councils at provincial level. The organization and functions of such councils can therefore vary from province to province.

c. Judicial actors

c.1. Judges

1. Qualifications, appointment and training

The President has the power to appoint justices to the Supreme Court with the consent of two thirds of the Senate. The President also appoints judges to the lower federal courts following submission of a list of candidates by the Judicial Council. For these judges, the President needs approval of the Senate by a simple majority.

Article 13 of *Law 24,937* concerning the Judicial Council lays down a lengthy procedure for the selection of candidates to be judges in courts other than the Supreme Court, including pre-selection by a panel composed of judges, lawyers and law professors and endorsement by two thirds of the Judicial Council before the candidate can be included in the list submitted to the President.

2. Security of tenure

All judges enjoy life tenure until the age of retirement.

3. Discipline, suspension and removal

The removal of Supreme Court justices is carried out by Congress through impeachment proceedings known as a “political trial” (*Juicio Político*). The Chamber of Deputies has the power to indict Supreme Court justices before the Senate if they have failed in the performance of their duties or committed a criminal offence. The removal of the person concerned is decided by a two-thirds majority vote of the Senate (article 59 of the Constitution). “Political trials” are usually extremely slow.

The Judicial Council has the power to open investigations as well as to decide on charges to be brought against judges from the lower courts at an impeachment panel (*jurado de enjuiciamiento*). Their removal is decided by the panel, which is made up of representatives of the judiciary, the legislature and lawyers’ associations, following proceedings that comply with due process and respect the right of the accused judge to defend himself (article 25 of *Law 24,937*). The final decision of the panel, however, cannot be challenged. Only a request to the panel to clarify its decision is permitted (article 27).