



Costa Rica

JUDICIAL SYSTEM ASSESSMENT

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CYRUS R. VANCE CENTER
FOR INTERNATIONAL JUSTICE



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Judicial System Assessment

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Introduction

This document is part of a series of assessments on the situation of the judiciary in Central American countries, which aim to provide concrete and updated information on the different countries in the region, make problems visible and generate productive conversations with the national and international community.

The assessment of Costa Rica seeks to make visible, on the one hand, the main structural, normative and operational aspects of the Judicial Branch in Costa Rica, and on the other hand, the complications in terms of judicial independence in this jurisdiction. It summarizes the main structural and normative aspects of the functioning of the Judiciary in Costa Rica and raises the complications that currently arise in terms of judicial independence in this jurisdiction. This includes issues such as the selection and appointment of magistrates and judges, evaluations, promotions, disciplinary processes, dismissals, the physical and legal security of judicial operators, interference by other branches of government in the administration of justice, cases of corruption, and the concentration of administrative and financial powers, among others. It also studies the progress that has been made through the adoption of norms and policies aimed at mitigating these complications.

This report is produced by the Central American Federation of Judges for Democracy FECAJUD as part of a project to strengthen independent judiciary with the *Cyrus R. Vance Center for International Justice* of the New York City Bar Association, with support from the National Endowment for Democracy (NED).

The **Central American Federation of Judges for Democracy (FECAJUD)** was established in the city

of Tegucigalpa, Republic of Honduras on May 1, 2009 as a non-profit legal entity under private law, composed of associations of Central American judges, magistrates and magistrates with a democratic vocation committed to strengthening the Constitutional Rule of Law, Judicial Independence and respect for Human Rights. The Federation's goals are to contribute to the consolidation of the Democratic Rule of Law and Judicial Independence in the countries of Central America, and fundamentally to contribute to a greater awareness on the part of judges as guarantors of Human Rights.

The **Costa Rican Association of Judges (ACOJUD)** for Democracy is an organization of judges that promotes the democratization and independence of the judiciary and safeguards the dignified exercise of the judiciary.

The **Cyrus R. Vance Center for International Justice** promotes global justice by engaging legal professionals around the world to support civil society and an ethically active legal profession. It is a non-profit program of the New York City Bar Association that brings together leading law firms and other partners around the world to promote international justice initiatives and provide pro bono legal representation to civil society organizations fighting for social justice.



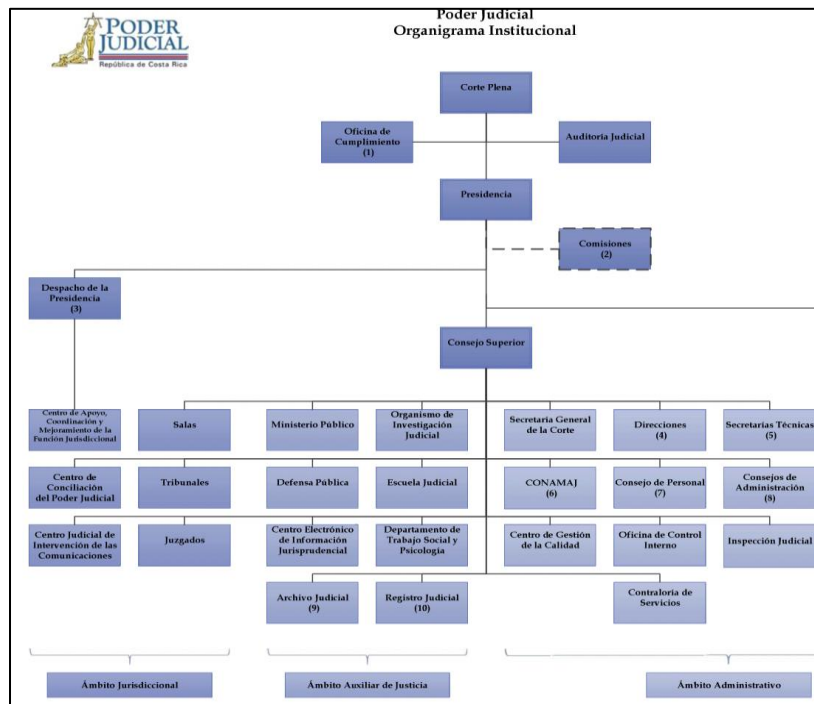
I. Costa Rican Judiciary

1. The Judiciary in Costa Rica

Pursuant to Article 152 of the Constitution, the Judicial Power in Costa Rica is exercised by the Supreme Court of Justice and the other courts established by the law.

The Judicial Branch in Costa Rica is hierarchically integrated by a Full Court headed by a Presidency, and in which working commissions are created. Some competencies are also delegated to the Superior Council (*Consejo Superior*) and the Judiciary Council (*Consejo de la Judicatura*). Additionally,

there is the General Secretariat (*Secretaría General*) of the Court and the Superior Council. The Court is divided into four cassation chambers: Chamber I, Chamber II, Chamber III, and Constitutional Chamber, followed by the collegiate and cassation courts, and then the first instance and criminal courts, as well as the small claims, misdemeanor, and summary matters courts. The Judicial Branch is also integrated by the Public Prosecutor's Office, the Judicial Investigation Agency, the Public Defense, the Judicial School and the Judicial Inspection.¹



Source: <https://pj.poder-judicial.go.cr/images/documentos/organigramas/Organograma Poder Judicial.pdf>

2. Nomination, selection and appointment of judges and magistrates

One of the recurring problems in different jurisdictions in Central America is the influence of other public authorities, political actors and the

private sector in the nomination, election or designation and appointment of judges and magistrates to pursue individual interests. There are



also problems with the suitability of the profiles that make up the judicial body and this affects the quality of decisions. This also generates an issue of trust in the judiciary on behalf of citizens and all the actors

of the legal community, as well as a series of defects and irregularities in the decisions made by these operators that result in a fracture of the rule of law.

a) Appointment process subject to individual interests

In Costa Rica, the separation of powers is constitutionally protected, and none of them may delegate the exercise of their own functions. The Constitution also provides that the Legislative Branch has the power to appoint the regular and alternate justices of the Supreme Court of Justice.²

In 1999, the Rules of Procedure of the Legislative Assembly were amended to create the Permanent Special Commission on Appointments (CPEN) *Comisión Permanente Especial de Nombramientos*, whose purpose is to analyze appointments in the plenary of the Legislative Assembly.³ The establishment of this body optimized the process in some aspects, providing it with greater publicity, for example. Then, in 2003, another reform determined that the magistrates had to be appointed with a majority of two thirds of the Assembly's members.⁴

In spite of having a system that provides for certain controls such as the inclusion of an evaluating and analytical body within the Legislative Branch itself, political operators continue to have total influence in the appointment of magistrates to obtain benefits, and this is allowed precisely, by a system in which the deputies appoint the magistrates, without paying attention to international standards that guarantee an evaluation of suitability, with a high degree of discretion through interviews that are evaluated subjectively without a reasoned public vote in plenary.⁵ The United Nations Special Rapporteur on the Independence of Judges and Lawyers, Diego García Sayán, pointed out in 2019 that candidates for vacancies in the judiciary hold private meetings with members of the Legislative Assembly, outside the processes established by the CPEN.⁶ These irregular acts led to a series of

appointments that were later questioned and investigated eventually resulting in a series of processes and even the dismissal of a magistrate.⁷

The Special Rapporteur also referred to the Final Report of the Independent Panel for the election of judges of the Constitutional Chamber and the Third Chamber of the Supreme Court of Costa Rica of May 2018, highlighting that this report explains problems such as the lack of a uniform and objective process in the election of judges, as well as the absence of adequate job profiles, flaws in the methodology for interviews, in the criteria for requesting information for the verification of the ethical profile, and lack of motivation in the final decisions. This report recommends the adoption of a system endowed with greater transparency and objectivity, based on technical criteria.⁸

CEJIL has also highlighted some flaws in the regulatory design that allows for the permeability of political issues in judicial matters. On the one hand, it points out that the value given to the interviews in the evaluation score, 40%, is very high and this implies more discretion in the selection process. He also emphasizes the lack of methodology in this part of the process and suggests that the CPEN structure this process with the help of experts to ensure the relevance of the candidates. On the other hand, it stresses the lack of transparency, publicity and access of the media and citizens to the hearings and different stages of the process.⁹

This results in processes that lack transparency and affect the functioning of the judiciary.¹⁰ Regarding the system of nomination, selection and appointment of magistrates, the Third Report on the



State of Justice of the State of the Nation Program stated that:

"The sudden legislative dynamism in the appointment of magistrates did not alter a fundamental fact: the election system was not modified. Thus, the legislative votes during the entire process of selection of magistrates, from the evaluation in the Permanent Special Commission on Appointments (CPEN) and until the final vote in the plenary, continue to be secret. The plenary may vote for "last minute" candidates not recommended by the CPEN; furthermore, the newly included attestation evaluation methodology used by the CPEN to select a shortlist maintained a strong component of arbitrariness, by giving 40% to an interview, which is assigned without motivation or rationale. In summary, it has been found that when it comes to choosing magistrates, opacity and lack of accountability on the part of congressmen and their parties reign, a situation that prevents guaranteeing that appointments are made based on evidence and suitability".¹¹

For the other appointments of judges, the Court or the Superior Council (*Consejo Superior*) must request the Council of the Judiciary (*Consejo de la Judicatura*) to send a list of three candidates from among the eligible officials, and the vote will be secret.¹² At this point, it is important to note that the political effect of the appointment of magistrates also has direct effects on the appointment of judges, since it is the same people who are in charge of appointing some categories of judges (4 or 5)¹³, or of directing the Councils in charge of the selection and election process. It is worth noting that there is excessive discretion in appointments, despite the fact that they are made up of shortlists, they can make a final decision or even refuse a candidate without explanation. In addition, there are delays in appointments and suspensions of competitions in violation of the Judicial Civil Service Law, among others.

There is a list of judges who have aspired to various promotions and have been excluded from the lists for political reasons or because of their participation

in some processes and the result of specific rulings. Although there is a framework that guarantees the construction of lists with technical criteria under the current norms, these are filtered with arbitrary criteria imposed by the Plenary Court.

In fact, this was one of the main findings of the IV State of Justice Report published in June 2022 by the State of the Nation Program, which pointed out that the Plenary Court (*Corte Plena*) and the Superior Council (*Consejo Superior*) have concentrated powers without effective checks and balances. This certainly affects their adequacy and transparency in the eyes of individuals who need independent justice. On this point, the Report concluded that:

"Although there is a legal and institutional mechanism for the selection of the judiciary, based on suitability criteria, which should be recognized as an advance, it is certainly susceptible to updates and improvements. However, the study found that, as the hierarchy of decision making advances, the selection criteria are diluted. Although it is now feasible to find de facto ways to influence, not necessarily illegally, the Full Court, it is clear that the technical bodies do not make the final decision. It was possible to reach these conclusions by reviewing the minutes of each appointment made in the last five years, as well as through interviews with key informants. Both sources allowed us to identify information on appointments made based on parameters that are not duly regulated; for example, communications via e-mail between the candidates included in the shortlist and some magistrates".¹⁴

The Report points out that the persistence of the concentration of appointment and promotion powers in the Supreme Court of Justice, together with the lack of suitability of candidates and of a rigorous system that guarantees the selection of candidates with merit and experience, continue to be problems that threaten the internal and external independence of the Judicial Branch, since the constitutional counterweights to face deteriorations in democracy are weakened.¹⁵ The Report states that:



"The procedure for the appointment of judges continues to be an opaque process, which does not guarantee the suitability of the persons selected for the highest positions in the judicial conglomerate. The initiatives and national and international entities that recommend changes in this form of selection have not been heeded."¹⁶

The Report also suggests the introduction of reforms that would remove the appointment of Judges 1-5 from the powers of the Supreme Court. It also calls for reducing discretion and lack of justification in appointments and eliminating the use of unregulated criteria.

In 2023, a legislative reform project was on the table that would allow the reelection of magistrates if two thirds of the legislative body approve it. At the moment, the rules provide that reelection can be truncated if two thirds of the deputies oppose it. For Evelyn Villareal, coordinator of the State of Justice Report, this imposes very burdensome conditions for reelection. In her opinion, this implies greater political influence in the election of magistrates.¹⁷

b) Dismissals and removals

The appointment is made for an indefinite term for those judges who are in property. On the other hand, for those who have an interim or substitute status, the appointment will vary depending on for how long they have been in that position, there is no fixed term for these appointments.

In Costa Rica there is a judicial civil service, established in the Judicial Civil Service Law. The judicial civil service comprises the following levels: judge 1, judge 2, judge 3, judge 4, judge 5. It contains the following guarantees: stability in the position, promotion to higher hierarchical positions, transfer to other positions of the same or lower category at the request of the official concerned; periodic training.

The guarantee of stability and irremovability has been undermined by the conditions under which

Civil society organizations highlighted that this proposal affects the stability and immobility of justice operators.¹⁸

In its 2023 Annual Human Rights Report, published in 2024, the IACHR highlighted the absence of clear and objective criteria in the selection and appointment of judges and the lack of mechanisms for citizen participation in this regard.¹⁹

The Costa Rican Association of the Judiciary (ACOJUD) called upon the highest levels of judicial government to review the final stages in the process of appointing judges, as a number of suitable profiles are inexplicably discarded.²⁰ In a written document submitted to the Judiciary Council (*Consejo de la Judicatura*), ACOJUD commented on the evaluation methodology used, the conformation of the evaluation tribunals, the criteria of the interdisciplinary unit, the modifications to the working conditions included in the competitions and the definition of the salary scale.

proprietary positions are put out to contest, with the following catchphrase:

"The positions will be subject to modification of schedules that may be relocated according to the workload, efficient use of resources and public service; for that reason, they may also work during evening hours and have up to five-day work weeks including weekends. - They may be subject to work alternative or deferred schedules, under the face-to-face or teleworking modality, provide their services when required, under daytime, evening or mixed schedule; or be subject to changes in the location of the position (between offices or circuits nationwide), or even to changes in working hours. - All positions subject to this competition may be reassigned, according to workloads, to work on criminal files of the daytime, in flagrante delicto and/or mixed Trial Court; as deemed by the Superior Administration, according to institutional need".



It is a clear contradiction with the guarantee of irremovability contained in international rules and standards, that the conditions of the competitions for judicial positions generate permanent instability for the judges appointed to them, as they are subject to material mobility in their position, apparently consented to in the acceptance of the competition by the judge, but which means that their position remains at the disposal of the administrative bodies of the Judiciary.

Some large-scale, nationwide corruption scandals between 2016 and 2019 had implications for the judicial branch, resulting in early retirements, sanctions, and dismissals of judges and magistrates. In 2014, the media reported that a businessman obtained a series of bank loans irregularly to import cement from China. This cement did not comply with Costa Rican regulatory requirements and investigations were opened against various public officials who facilitated this illegal action, including the removal of a Supreme Court of Justice magistrate.²¹

c) Working conditions: Social security for members of the judiciary

In 2018, Law 9544 was approved reforming the retirement and pension regime for members of the judiciary. This law increased the retirement age and the time of work required for retirement, included variations to the retirement parameters, and increased the amount of contribution which directly affects the amount of their salary that will later become their pension.²²

Judge Adriana Orocú has pointed out that the social security regime applicable to members of the judiciary is pre-constitutional and specific initially for these officials of the judiciary and then extended to judicial officials, including prosecutors, public defenders and judicial police.²³ He added that in 2018 drastic changes were made, which ignored the pronouncements and recommendations of the Judiciary as well as the technical guidelines of the International Labor Organization²⁴, in the production of the new 2018 regulations, which together with the Law for Strengthening Public Finances generates an administrative and resource disaster in the Judiciary. A large number of

resignations have also occurred amongst the personnel trained for years in the Judicial Branch, given that retirement was largely decreased, obstructing a programmed stable life project and coupled with the salary decrease due to the implementation of the law of strengthening of public finances and the projection of other decreases due to the approval of the Public Employment Law, has caused a great instability in the civil service, which no longer finds remaining in the Judicial Branch attractive. Several experts affirm that these norms were approved in contravention of acquired rights and constitutional precepts.²⁵

In its 2023 Annual Human Rights Report, the IACHR identified practices and legislative initiatives that affect the independence of the judiciary as challenges.

The adoption of these pension and public finance rules has been identified as the cause of a drainage of talent and human capital from the Judiciary.²⁶

d) Promotions and judicial civil service

The State of the Judiciary Report found that, despite the existence of a Judicial Civil Service Regulation that contemplates performance and quality factors, no evidence was found of a correct implementation of these within the selection, evaluation and

promotion processes. The latter does not seem to coincide with any performance measurement or evaluation tool.²⁷



The Report points out that many of the normative elements of Article 74 of the Judicial Civil Service Law lack processes and tools for their measurement, including quality of service and performance. On this point, there is evidence of a concentration of more than 70% in the result of the technical test, either oral or written.²⁸

On July 1, 2024, the Plenary Court (*Corte Plena*) adopted an agreement to include a clause or condition in the job competitions so that the person offering the job and the individual who has been evaluated through a competition, accepts to be transferred to any position in the country in the respective subject or changes in the schedule or working hours, as part of the "employer's management powers".

On July 4, 2024, ACOJUD denounced the lack of technical support for the policies adopted by the Full Court on July 1 of the same year, weakening the judicial civil service through agreements that do not consult international standards of judicial independence, specifically those of stability and irremovability. These policies generate pressure for judicial operators to accept positions that can be transferred at any time for budgetary reasons, rather than because of the need of the service.²⁹ ACOJUD also filed an appeal for reconsideration against this agreement, arguing that it violates the norms of judicial civil service stability, the principle of the Natural Judge, the Bangalore Principles, and the United Nations Basic Principles on the Independence of the Judiciary.

3. Concentration of financial, administrative and judicial powers.

The Supreme Court of Justice is in charge of the judicial government. It is supported by several technical and auxiliary bodies such as the Public Prosecutor's Office, the Public Defender's Office and the Judicial Investigation Agency.³⁰ This implies a concentration of powers in the Supreme Court of Justice, since apart from its jurisdictional functions, it has several administrative, strategic, budgetary and institutional policy-making functions.³¹

The Judicial Branch in Costa Rica has an administrative structure comprised of the following bodies: the General Secretariat of the Court, four Directorates, five Technical Secretariats, the National Commission for the Improvement of the Administration of Justice, the Personnel Council, the Administrative Councils, the Quality Management Center, the Internal Control Office, Judicial Inspection, and the Comptroller of Services.

The Supreme Court of Justice also establishes the number of processing and deciding judges, as well as

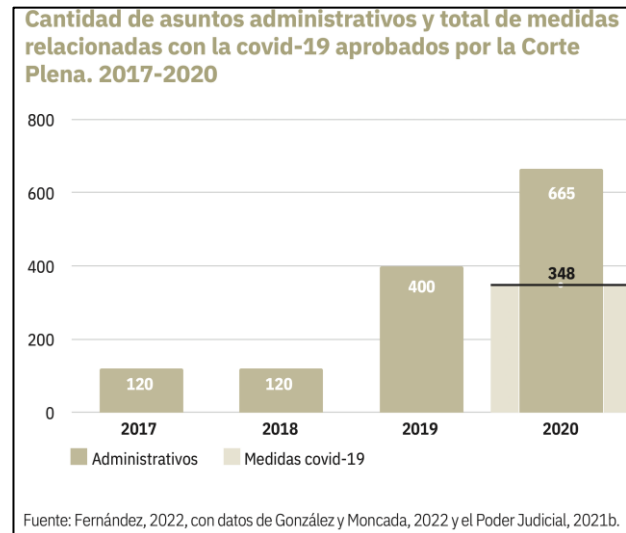
the number of other judicial servants that courts of any category and subject matter must have.

The magistrates of the Supreme Court of Justice have in their hands a series of essential appointments in the Judicial Branch that affect the correct development of jurisdictional functions. These are the selection of principal and alternate magistrates, as well as positions of coordination of courts and institutional commissions. This includes the Judicial Auditor, the Chief of the Judicial Inspection, the Attorney General, the Chief of the Judicial Police, even magistrates of the Supreme Electoral Tribunal, and the Executive Directorate itself.³² Currently, 32% of the matters handled by the Plenary Court respond to budgetary and administrative matters, and another 25% to appointment issues. This implies that 57% of the tasks of the Plenary Court are not related to jurisdictional functions.

In 2017, a commission dedicated to the decentralization of functions of the Supreme Court was created and it produced a report in which more than 80 administrative and financial powers of this body were identified, some of which should be transferred to the Judiciary Council (*Consejo de la Judicatura*) and resources invested in strengthening this technical body. On this aspect the State of the Judiciary Report noted that:

"Using the metaphor used in the Third Report, the Court acted in its various simultaneous roles as board of directors, executive director and manager during the response of the Judiciary to the unprecedented pandemic shock, in addition to assuming performance evaluation functions. The micro-management performed by this body was articulated in the more than five hundred decisions adopted in this area. Only a minority of measures were taken by the Superior Council, a body created in the nineties of the last century in order to decongest the work of the Supreme Court of Justice".³³

The following table, also included in the Report³⁴, is illustrative of the increase in administrative matters assumed by the Supreme Court of Justice in recent years:



4. Undue interference by other stakeholders

In 2024, an injunction issued by a judge suspended an executive decree on rice import tariffs. President Rodrigo Chaves, head of the Executive Branch, reacted by questioning judicial

independence and suggested that there were political motivations behind the judicial decision.³⁵ Judicial associations came out in defense of the independence of the judiciary.

5. On the secret or public vote in the Plenary Court

As of August 1, 2022, the Presidency of the Judiciary became vacant due to the fact that Justice Fernando Cruz did not seek reelection. Several associations of jurists, practicing lawyers, unions and judicial associations, academics and civil society organizations from different states requested a process with greater transparency³⁶ because the secrecy used gave indications and suspicions of political struggles within the Judiciary. Article 59 (6) of the Organic Law of the Judiciary as

well as a 2017 Judicial Branch Circular required a secret ballot.³⁷ On this basis, the Judiciary Union and ACOJUD went to the Constitutional Chamber through amparo appeals claiming that the secret ballot violated the fundamental rights and principles to accountability, publicity, transparency, motivation of the act and judicial independence; as well as the provisions of Articles 11 and 30 of the Political Constitution.³⁸ The 22 magistrates conducted multiple rounds of voting,



more than 18, since August 29, 2022 without reaching the 12 votes necessary for the election of the President.³⁹ On September 26, Orlando Aguirre assumed the Presidency, after Magistrate Luis Fernando Salazar withdrew from the race.⁴⁰

As a result of these discussions, an amendment to the Organic Law of the Judiciary was recently

approved by the Legislative Assembly, which provides for public voting by the Plenary Court.⁴¹ Thus, through Bill 23313, Articles 13, 15 and 59(6) of the Organic Law of the Judiciary were amended to ensure transparency in the voting of the Judiciary.

6. Budget

In 2018, the Legislative Assembly approved the Law for Strengthening Public Finances, which regulates public employment matters and organizes related tax contributions. The law contains in its text an article that protects the labor and social security rights of civil servants acquired prior to its issuance, which however has not been fully recognized, since issues like salary nomination have been applied to all civil servants, including those with permanent contracts since before the reform. On March 18, 2019, the full Supreme Court agreed not to apply Title III of the Law for the Strengthening of Public Finances and thus avoid cutting salary incentives and annuities.⁴² Yet, on December 19, 2019, the Comptroller General of the Republic issued a resolution⁴³ ordering the non-application of said agreement and threatening to remove the President of the Supreme Court of Justice, in case of non-compliance with the order, in case of non-compliance with this order, thereby exceeding its constitutional powers and modifying with a directive, the procedure for removal of magistrates that can only be performed by the Legislative Assembly.⁴⁴

As a result of the Supreme Court's decision not to apply Title III for those officials who had acquired rights, the Ministry of Finance informed the Judicial Branch of the cut of 2,543 million colones in the budget of the Judicial Branch requested for the creation of a court to deal with corruption issues in a retaliatory measure.⁴⁵

The Judicial Branch, represented by the Supreme Court of Justice, opposed the content of the bill on several occasions, stating that it would affect the organization and operation of the Judicial Branch.

The Law for the Strengthening of Public Finances has had adverse effects on the judiciary in Costa Rica, with the implementation of the fiscal rule, and violates the United Nations Basic Principles on the Independence of the Judiciary, since these require the State to provide adequate resources for the judiciary to properly perform its functions.⁴⁶ The law reduces salary supplements, the payment of severance pay, restricts salary guarantees, restricts the use of public funds for training, and introduces the possibility of outsourcing services and influencing the performance evaluation of judicial officials, at the direction of the Ministry of Planning.

The State of the Judiciary Report states that the budget expansion of the Judiciary ended in 2019, the year in which it began a systematic cutback and that, additionally, new functions and powers have been assigned without budgetary support:

"Indeed, in contrast to the period of budgetary expansion that occurred during the present century (until 2018), as of 2019 there was a systematic reduction in the actual financial resources available to the Judiciary. However, during these years, new competencies continued to be created by means of laws approved by the Legislative Assembly, which generate



additional demands on a dwindling budget. However, the cutback of resources is not homogeneous in all areas of the judicial conglomerate, as some continued to experience real growth; in addition, the cost per case continued to grow (Table 1.1) and areas of inertial budget under-execution were identified (Chapter 6), which put increasing pressure on the institution's scarce resources".⁴⁷

In 2023, the Treasury cut the budget of the Judicial Branch by more than 7.8 billion colones, affecting some of the items that do not constitute salaries.⁴⁸ This cut may have effects on the Judicial Investigation Agency, as well as on the Public Defense and the Office of Attention to Victims and Witnesses.⁴⁹

Likewise, by virtue of the recent Public Employment Framework Law⁵⁰, the Ministry of Planning, part of the Executive Branch, has specific powers that raise suspicions about undue influence on the Judicial Branch. This ministry had already indicated on April 10, 2019 to the Supreme Court of Justice the prohibition to create new positions, restricted the request for resources, and conditioned the payment of benefits to the evaluation of the performance of the Judicial Branch made by the same organ of the Executive Branch.⁵¹ In 2023, as a result of the mandate of this law, the 409 classes that divide the more than 13 thousand jobs of the Judicial Branch must be redefined, which has generated much concern in the sector.⁵²

7. Disciplinary regime

This is another point that is affected by the secret votes within the Plenary Court, since some magistrates have denounced undue political interference in disciplinary matters.⁵³ Likewise, the Report on the State of Justice revealed the need to

strengthen the effective application of the disciplinary regime, finding deficiencies in the institutional design due to the dispersion of these functions and weaknesses in the management of the fight against corruption.⁵⁴

8. Harassment of judicial operators through complaints

The potential use of criminal and disciplinary proceedings as a tool to pressure members of the judiciary is also a matter of concern. In 2019, Congressman Pedro Muñoz pointed out, on the one hand, the unconstitutionality of the aforementioned Supreme Court of Justice agreement (respecting the acquired social security rights of judicial officials), and on the other hand, filed criminal charges against 14 Supreme Court of Justice magistrates for a series of crimes that were allegedly committed in the jurisdictional function.⁵⁵

As previously mentioned, on December 19, 2019, the Office of the Comptroller General of the Republic called out the President of the Supreme Court of Justice, Fernando Cruz Castro, demanding him to ensure the application of Title III of the Law for the Strengthening of Public Finances to public officials regardless of their date of entry. In addition, they threaten with the imposition of a serious misdemeanor "to remain in disobedience" and eventual dismissal.⁵⁶ This type of actions constitute an undue interference of the legislative power in the development of jurisdictional functions.

9. Security of judicial operators.

Within the Judicial Investigation Agency, there is a specialized area called "Protection of Judicial Officials". Likewise, there is a Law for the protection of victims, witnesses and other parties involved in the criminal process, which includes judges, defense attorneys and prosecutors within their protection, in case of a criminal complaint.

There must be a manifest and voluntary request from the person interested in receiving protection and who is facing a risk greater than that inherent to the position. This risk must be the result of the functions that he/she is required to perform daily due to his/her position. Some of the specific elements that are evaluated are:

- The activity that the applicant is required to carry out depending on the judicial processes that correspond to him/her.
- The type of criminal structure and legal status of the accused.

- Characteristics of the physical space where the judicial activity takes place
- The immediacy of the process.

In case the risk has materialized and there is some kind of threat, the officer is referred to the Office of Protection for Victims of Crime of the Public Prosecutor's Office, where they have evaluation teams composed of professionals in various areas. They are the ones who determine the corresponding protection measures. They work under the protection of Law 8720. The judicial operators interviewed affirm that the protection measures for civil servants are insufficient with respect to the growing specialization of criminality.

With respect to legal certainty, in Costa Rica the only judges with immunity are the regular and alternate magistrates. The process to remove the immunity of a magistrate is done through approval by qualified majority in the Legislative Assembly.

10. Gender

In Costa Rica, the same phenomenon that is observed at the regional and global level, is present with respect to the "glass ceiling" that women encounter in the development of the judicial civil service. Although data on the gender gap shows an advance in terms of access to the judicial civil service and in the first seats of this civil service, this number is substantially reduced as the hierarchy of these positions increases. On this point, the State of the Judiciary Report concluded that:

"An additional element worth highlighting is the growing gender gap as judges move from grade I to grade II. This report includes relevant findings that could show that this issue must continue to be addressed to achieve greater gender equity. In the five-year period 2016-2020, the Plenary Court appointed 257 male and female judges in grade I. In 30% of the competitions held, the shortlist did not include female participation

and only 6% did not include male representation. In the selection processes for grade I positions, when the shortlist included both genders, a woman was appointed in 65% of the cases. However, when looking at the data on the grade ladder, the percentage of women reaching the top of the judiciary is low. There is a gap of 31 percentage points between appointments of women in grade 1 and those appointed in grade 5."⁵⁷

The IACHR also highlighted the insufficient adoption of measures to promote the participation of women as a challenge to compliance with international standards guaranteeing judicial independence.⁵⁸



11. Corruption in the judicial system

As mentioned above, problems in the composition of the judiciary result in a series of decisions and outcomes that affect governance and the rule of law. This results in processes that lack transparency and affect the functioning of the judiciary.⁵⁹

It is worrisome that a very limited segment of the citizenry has confidence in the Judicial Branch. This can be explained by the various corruption problems in Costa Rica.⁶⁰ In this matter, the Judiciary is highly criticized for its management of the fight corruption. Out of every one hundred processes for alleged acts of corruption, only seven of them end in a sentence.⁶¹

Following a 2014 case in which a judge received money in exchange for dropping an investigation against a series of individuals accused of drug trafficking, the Supreme Court of Justice strengthened certain processes including the evaluation of personnel, the creation of a corruption risk map and of a Commission of Inquiry on the penetration of organized crime in the judiciary.⁶²

In 2017, another event took place in the Third Chamber resulting in the removal of a magistrate for undue interest. In that year, a legislative investigation commission was also created. After this event, 10 working groups were created within the Court, to prove shortcomings and propose solutions on the management of the Judiciary, of which the only product that had approval was a draft law on the prosecutorial civil service, which was sent to the Legislative Assembly and there, it was filed due to the passage of time, without political will to be known in Commission or Plenary. The conclusions of the other working groups, including modifications to the election of Magistrates, have not been heard in the Plenary Court.

Finally, it is worth mentioning the direct impact that administrative pressure has had on the administration of justice. Specifically, there has been a process of strengthening control organs while at the same time, seeking to implement measures that limit independence. Some of these measures include the independence of criteria, the time frames for the analysis of cases by judges, the response capacity, and ultimately the administrative burden on judges.



Endnotes

¹ Article 3, Judicial Civil Service Law, Law No. 8 of November 29, 1937 and its reforms, totally reformed by Law No. 7333 of May 5, 1993. It also contains the reforms introduced by the Judicial Reorganization Law No. 7728 of December 15, 1997.

² Constitution of the Republic of Costa Rica, Article 121. Powers of the Legislative Assembly. *See also* Article 157: "The Supreme Court of Justice shall be formed by the Magistrates that are necessary for its good service; they shall be elected by the Legislative Assembly, which shall integrate the different Chambers indicated by law. The reduction of the number of Magistrates, whatever it may be, may only be agreed upon after all the procedures provided for by the partial reforms of this Constitution.

³ Regulations of the Legislative Assembly of Costa Rica. *"Appointments Committee. It shall be in charge of analyzing, in order to submit a report, the appointments referred to it by the Plenary, as well as the request for ratification of the appointments made by the Executive Branch, when appropriate."*

http://www.asamblea.go.cr/ca/Reglamentos%20de%20la%20Asamblea/Reglamento_de_la_Asamblea_Legislativa.pdf

⁴ Constitution of the Republic of Costa Rica, Article 158.

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