



El Salvador

JUDICIAL SYSTEM ASSESSMENT

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CYRUS R. VANCE CENTER
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FECAJUD
El Salvador

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Judicial System Assessment in Central America and the Caribbean

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Abbreviations

-CSJ	Supreme Court of Justice.
-CNJ	National Council of the Judiciary.
-LCNJ	Law of the National Council of the Judiciary.
-LCJ	Judicial Civil Service Law.
-LOJ	Judicial Organic Law.
-Cn.	Constitution.
-ARENA	Nationalist Republican Alliance.
-FMLN	Farabundo Martí National Liberation Front.
-IACHR	Inter-American Commission on Human Rights.
-IACHR Court.	Inter-American Court of Human Rights.
-DL.	Legislative Decree.
-UN	United Nations.
-OAS	Organization of American States.
-FUNDE	National Organisation for Development.
-FGR	Office of the Attorney General of the Republic.
-CICIES	International Commission against Impunity in El Salvador.



Introduction

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

The diagnostic study on El Salvador seeks to highlight, on the one hand, the main structural, regulatory and operational aspects of the judiciary in El Salvador, and on the other, the complications in terms of judicial independence in this jurisdiction.

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FECAJUD was established in the city of Tegucigalpa, Republic of Honduras on May 1, 2009

as a non-profit legal entity under private law, made up of associations of Central American judges and magistrates, with a vocation for democracy 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 *Cyrus R. Vance Center for International Justice* promotes global justice by engaging legal professionals globally in support of 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. About the Judiciary in El Salvador

1. Brief background

In El Salvador there have been periods in history in which the Judicial Branch has been strongly influenced by political bodies. One of those periods was the civil war from 1980 to 1992, which was the setting of serious human rights violations and there were no institutions willing to investigate them; in many areas of the country the courts of justice and the prosecutor's offices, institutions called to judge the criminal behavior of State agents and insurgents, disappeared.

Following the Peace Accords of January 1992, the judicial system underwent important transformations which looked towards achieving the independence of judges; to that effect, constitutional reforms were made, such as the following: i) allocation of a budget to the Judicial Branch of 6% of the current income of the State budget, which would prevent the Supreme Court of Justice (CSJ hereinafter) from engaging in budget

negotiations; ii) creation of the Judicial Training School attached to the National Council of the Judiciary (CNJ hereinafter); iii) assignment of new attributions to the CNJ: propose candidates for magistrates for the Supreme Court of Justice and shortlists for the appointment of Second Instance Magistrates, First Instance and Peace Judges, the latter would already be lawyers; function of training magistrates and judges, and evaluating members of the judicial civil service; iv) reforms to the process of electing magistrates for the CSJ and lengthening the term of office of these.

All these transformations have produced a new image and functioning of the judiciary that is much closer to international standards. Nonetheless, there are still many challenges at the institutional, legal and operational levels to strengthen judicial independence and, consequently, the rule of law.

2. Structure and operation

a) Integration

The Judicial Branch in El Salvador¹ is composed of the Supreme Court of Justice, the Chambers of Second Instance and other courts established by secondary laws. The Supreme Court is composed of fifteen Magistrates who form four Chambers: Constitutional Chamber, Civil Chamber, Criminal Chamber and Contentious Administrative Chamber. The Constitutional Chamber is the only one created by the Constitution (art. 174 Cn.), which is responsible for hearing and resolving claims of unconstitutionality of laws, decrees and regulations, amparo proceedings, habeas corpus, disputes between the Legislative Branch and the

Executive Branch; it is composed of five Magistrates appointed by the Legislative Assembly, which elects its President, who will also be the President of the Supreme Court of Justice and the Judicial Branch. The Civil and Criminal Chambers are composed of three Magistrates each, one of them being the President; and the Contentious Administrative Chamber is composed of four Magistrates, one of them being the President; all these chambers rule according to their respective matters. The Supreme Court in Plenary is formed by all the magistrates of the previously mentioned chambers (art. 50 LOJ). The Court also performs parallel tasks of assistance

or complements the administration of justice, such as: resolving conflicts of competence between courts, ordering the course of requests or rogatory commissions abroad and processing those coming from other countries, resolving pardons or commutations of sentences, hearing the exequatur of foreign sentences, hearing cassation appeals of sentences issued by the chambers, among others (arts. 182 Cn. and 51 LOJ). The previous higher level of the judicial structure is not part of the judicial civil service.

At the descending level, within the judicial civil service, there are Peace Courts, First Instance Courts and Second Instance Chambers, which hear criminal, civil, commercial, family and labor matters,

according to their assigned competence. Likewise, there are specialized courts that hear cases regarding violence against women, juvenile justice, environmental proceedings, money laundering, among others. The Second Instance Chambers, in addition to hearing appeals, hear exceptionally in the first instance certain matters such as lawsuits against the State. In criminal matters, being the most intense and incidental, it oversees the Peace Courts, Instruction Courts and Sentencing Courts, which handle all stages of the criminal process, which eventually may also be heard by the Criminal Chambers in second instance, which mainly hear appeals.

b) Classes and categories of Magistrates and Judges.

Article 13 of the Judicial Civil service Law (LCJ) regulates a system of classes and categories of Magistrates and Judges, which before the reform was as follows:

Class A corresponded to Second Instance Magistrates, which had two categories: Category I, Chamber Magistrates with headquarters in the metropolitan judicial area; Category II, Chamber Magistrates with headquarters in the other cities of the national territory.

Class B corresponded to Judges of First Instance; it was divided into three categories: Category I, Judges of the metropolitan judicial area; Category II, Judges of judicial districts corresponding to the other departmental capitals; and Category III, Judges of the other judicial districts.

Class C corresponded to the Justices of the Peace, and was structured in four categories: Category I, Justices of the Peace of the Judicial Metropolitan Area; Category II, Justices of the Peace of the remaining departmental capitals; Category III, Justices of the Peace of the other cities of the

country; and, Category IV, Justices of the Peace of other towns.

An action of unconstitutionality was attempted on this distribution of classes and categories, however, the Constitutional Chamber declared that the alleged unconstitutionality did not exist².

With the amendments to the LCJ contained in Legislative Decree 144, the three previous classes are retained, but categories are eliminated, leaving classes A and B with only one category, and class C with two categories.

As noted above, the Supreme Court itself is in charge of administering the judicial civil service, which includes, among other aspects, admission to the civil service, promotions, promotions, transfers, etc. The LCJ establishes that these are determined according to merit, suitability and seniority and that the members of the civil service enjoy stability in their positions. The LCJ establishes that these are determined according to merit, suitability and seniority and that the members of the civil service enjoy stability in their positions.



c) Admission to the Judicial Civil service.

The Magistrates and Judges shall enter the Judicial Civil service by appointment made by the Supreme Court of Justice, from shortlists of eligible candidates formed and sent by the CNJ. Applicants to these positions must submit to the CNJ an application and attestations proving the requirements demanded by the constitution, to undergo the corresponding technical selection

procedures. The procedures must guarantee the objectivity of the selection, equal opportunities among the applicants and the suitability of those selected. They shall include competitive examinations and the Judicial Training School. Entry to the civil service must be through the lower categories of the respective classes. The civil service shall commence upon taking office.

d) Transfers

Transfers - before the reforms -, operated with respect to positions of equal category (art. 39 LCJ), are ordered by the CSJ for justified reasons of convenience to the service; this order was not discretionary, since, according to the stability enjoyed by Magistrates and Judges, it could not be given *except in the cases and through the procedures specially provided by law*. With the reforms to the LCJ, transfers are also ordered by the CSJ for justified reasons of convenience of the

service - adding - *or by necessity, in a certain judicial seat, given the complexity and specialty of the matters to be dealt with there. The transfer must be to a judicial seat of the same category regardless of its geographic location*. An important aspect regarding transfers is that, with the reform to Art. 4 LCJ, transfers are removed from the cases and procedures established by law, and are only left to the decision of an Agreement of the plenary of the Supreme Court.

e) Promotions

Promotion is when one moves to a higher category or class position, which will be decided taking into account the performance evaluations in the current position, the aptitudes to opt for a higher position, the results of the competitive examinations and the seniority within the judicial civil service. In order to obtain it, a prior request must be made - it must be

understood that, to the person empowered to appoint -, submitted within fifteen days following the notice of vacancy. Granting the promotion is an attribution of the CSJ according to art. 6 lit. b) LCJ. The court or official competent to appoint, may commission the CNJ to conduct the competitions or tests it deems appropriate (art. 23 LCJ).

f) Economic Promotions

Promotion, according to Article 23 LCJ, consists of moving to a higher salary scale within the same category, in accordance with the Position Classification Manual and the Remuneration Plan, based on periodic evaluations of the development of work, results of training courses received, professional merits, conduct, seniority and other objectively evaluated qualities of the civil service

member. It may be granted ex officio or at the proposal of a hierarchical superior, based on the previously discussed criteria. The court or competent officials may commission the National Council of the Judiciary or the Judicial Training School to conduct the competitions or tests it deems appropriate.



g) Evaluation of Magistrates and Judges.

The National Council of the Judiciary, through the Technical Evaluation Unit, is the competent body to evaluate the work of Magistrates and Judges. The process to carry out this evaluation is through audit visits to each court and the analysis of the written reports that each official must send to that unit; both evaluations are called face-to-face and non-face-to-face respectively. Each evaluation is divided into two aspects: Evaluation of administrative performance and evaluation of the administration of justice.

The Supreme Court of Justice also audits the functioning and work of Judges and Magistrates through the administrative area and the Judicial Investigation Directorate.

The main criteria used for evaluation are speed and compliance with deadlines, administrative and personnel management of the court, professional merits, conduct, seniority, results of training courses received, issues related to ethics in the exercise of the judicial function and compliance with legal parameters related to judicial proceedings.

h) Disciplinary regime

Magistrates and Judges are subject to a disciplinary regime that is activated ex officio or at the request of a party, which seeks to punish the conduct of the official that is in line with the infractions regulated by the LCJ. The infractions are classified from less serious, serious to very serious, and the law regulates the casuistry of each of them. As for sanctions, these may be: Verbal or written reprimand, suspension from office and removal from office. The competent court or official to impose the above sanctions is the same one empowered to appoint the offender, in this case the CSJ. Regarding the procedure, it must be said that there is a duality in it, i.e., it can be instructed by the National Council of the Judiciary, but it can also be

instructed by the Directorate of Judicial Investigation attached to the General Management of Legal Affairs of the Supreme Court; In the first case, once the evidentiary period has elapsed, the Council will send the proceedings with a report to the Court, which will pass it to the Judicial Investigation Directorate to prepare a draft resolution, which will be heard by the full Court; in the second case, once the evidentiary period has elapsed, the head of the Judicial Investigation Directorate will submit the proceedings to the Presidency of the Court with a draft resolution that will be submitted to the full Court for a decision (arts. 49 to 62 LCJ.). 49 to 62 LCJ.

i) Concentration of financial, administrative, and operational powers of the Judicial operation of the Judicial Civil service

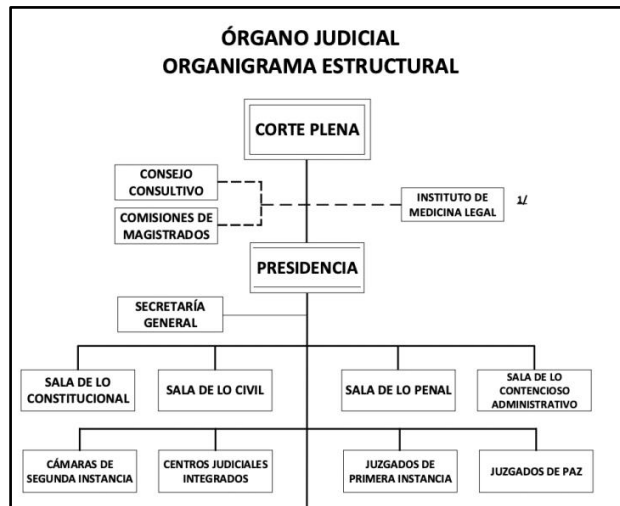
The Supreme Court of Justice has administrative and directive budgetary rule over the rest of the courts of the country. The Constitution orders it to oversee the prompt and complete administration of justice, for which it will adopt the measures it deems necessary. The budget of the judicial branch is approved by the legislature through the Budget Law of each year. The Supreme Court of Justice proposes

each year the budget of the Judicial Branch, which according to the Constitution of the Republic cannot be less than 6% of the current expenditure budget of the State, a limit that cannot be modified by the Legislative Assembly given the independence of the Judiciary.

The Court has an enormous load of administrative attributions such as the management of the budget assigned to the Judicial Branch, appointment of Magistrates and Judges of the Judicial Civil service, administration of the Judicial Civil service, reception and authorization of Attorneys and Notaries, application of the disciplinary regime to Judges and Attorneys, administration and surveillance of the public function of notaries, among many others. An imposing administrative apparatus, logistical, financial and security apparatus depends on the Supreme Court, which branches out nationwide in different administrative headquarters, which are

intended to meet the needs of the courts in terms of transportation, minor repairs, provision of furniture and equipment, as well as security in the conduct of proceedings.

It has been discussed in previous years whether some of the many powers concentrated in the Supreme Court should be transferred to the CNJ, so that the Court could devote more time to jurisdictional work, thus reducing or eliminating the historical backlog of proceedings experienced in the four chambers of the Court³.



Source: Supreme Court of Justice, Republic of El Salvador: <https://www.csj.gob.sv/organigrama-interactivo/>

3. Appointment and designation process for Magistrates and Judges

a) Magistrates of the Supreme Court of Justice

Conforming with Articles 131 and 173 of the Constitution, it is incumbent upon the Legislative Assembly to elect by roll call and public vote, among other second grade officials, the President and justices of the Supreme Court of Justice, as well as the Attorney General of the Republic. On this point, an excerpt from Article 186 of the Constitution, which establishes the judicial civil service, states that:

"The justices of the Supreme Court of Justice shall be elected by the Legislative Assembly for a term of nine years, may be reelected and shall be renewed

by thirds every three years. They may be removed by the Legislative Assembly for specific causes, previously established by law. Both for election and removal, the favorable vote of at least two thirds of the elected deputies must be taken.

The election of the magistrates of the Supreme Court of Justice shall be made from a list of candidates, which shall be formed by the National Council of the Judiciary under the terms determined by law, half of which shall come from the contributions of the entities representing the lawyers of El Salvador and where the most relevant currents of legal thought shall be represented. [...]"

In El Salvador - according to the previous provision - , the election process of Magistrates of the Supreme Court of Justice is carried out by the Legislative Assembly every three years, renewing one third (5) of the magistrates that conclude the 9 years for which they are elected. The candidacies arise from two lists, one formed by elections made by the lawyers of the country, organized by the Federation of Lawyers Associations of El Salvador (FEDAES), and the other, by a selection process carried out by the CNJ; both lists are made up of 15 candidates each. The list of 30 candidates is sent by the CNJ to the

Legislative Assembly, which must follow the procedure for the election of officials developed from Article 98 of the Internal Regulations of the Legislative Assembly. Upon receiving the proposals, they are transferred to the Political Commission of said body (made up of deputies of the different parliamentary fractions), which must directly carry out a public interview process, or appoint a special subcommittee; then, a report is issued that will later be submitted to the Plenary, which contains the proposals of the officials to be elected.

b) Magistrates of Chambers of Second Instance, Judges of First Instance, and Judges and Justices of the Peace

The election of these officials is made by the Supreme Court of Justice. When there is a vacancy to be filled, the Court must request the CNJ a shortlist of candidates for the position (arts. 181, rule 9 Cn., and 62 LCNJ); this body carries out a selection process among all those who first meet the requirements set forth in the Constitution (arts. 177 to 180 Cn.), then the requirements of experience, training received, positions held; the

process will include competitions and the Judicial Training School. Subsequently, the CNJ selects the shortlists of candidates for judges and sends them to the CSJ for evaluation and appointment. In the Court there is a judges' commission composed of judges of the full Court that interviews and evaluates the candidates and proposes their appointment to the plenary; then, by a simple majority vote, judges are elected for each court.

II. Interference by the political powers

1. Beginning of the Executive's speech attacks against the Judicial Branch

On June 1, 2019, a new period of government began in El Salvador, breaking with thirty years of bipartisanship; Bukele took office as President of the Republic for the 2019-2024 period. His administration has shown confrontation with other public powers, first, with the Legislative Assembly when it was dominated by the ARENA and FMLN political parties; later, with the COVID 19 pandemic, also with the Judiciary, since both bodies frustrated many of his law initiatives related mainly to the management of the COVID -19 pandemic, for

restricting fundamental rights such as personal freedom and freedom of movement. The President even took over the Legislative Assembly on February 9, 2020, supported by the Army and the Police, as pressure for the approval of a loan for his security plan⁴ .

The government began a crusade against the members of the judiciary when it identified that the judiciary acted independently and not at the service of the interests of the executive branch:

*"At the beginning, a hostile public narrative towards justice would have been promoted from the official political discourse (we all remember the **tweets of President Bukele**, replicated in a disciplined manner by the Cyan bench), to build or exacerbate a negative image of the justice institutions and their authorities, which would then serve as justification for the measures that followed: the summary and arbitrary removal of the totality of magistrates of the Constitutional Chamber and the Attorney General, the direct appointment of their replacements, and the appointment of five additional magistrates in the Supreme Court of Justice."⁵*

Specifically, the President carried out a media strategy against the Constitutional Chamber of the CSJ because of the rulings that prohibited detentions for the execution of measures to mitigate the spread of Covid-19 and any other decision contrary to the interests of the executive branch.⁶

In 2020, the government accused the magistrates of the Constitutional Chamber of "genocide" when

they prohibited detentions for violations of measures to prevent the spread of Covid-19⁷. In May of the same year, the President announced a complaint before the Inter-American Commission on Human Rights (IACHR), against the Assembly and the Constitutional Chamber "for the violation of the right to life and health of the Salvadoran people"; however, the president of the IACHR warned that "The commission does not have the competence to resolve controversies between two or more organs of the State. In fact, no international body or any international court would hear such controversies"⁸. This put a stop to the announced international action.

The above context led to foreseeing a worsening of the crisis not only of judicial independence, but also of democracy and the rule of law, which will begin on May 1, 2021 with the first acts of the Legislative Assembly that took office on that date, with a majority of the political party of the President in office and allied parties.

2. Decrees of dismissal of the Magistrates of the Constitutional Chamber and election of their Constitutional Chamber and election of their substitutes.

On May 1, 2021, five magistrates of the Supreme Court of Justice, their alternates and the Attorney General were dismissed by the Legislative Assembly - now with a pro-government majority as a result of the March 2021 elections -, and replaced by others, in accordance with the directive of the executive branch and without any process of defense of the dismissed officials, transparency or suitability with respect to the replacements. Subsequently, on June 30, another five magistrates were appointed without a process endowed with transparency, deliberation, in violation of the Political Constitution and the internal regulations of the Legislative Assembly. These first acts of dismissal and appointment carried out by the Assembly with a pro-government majority are openly unconstitutional for the following reasons:

- a) The magistrates of the CSJ and the Attorney General of the Republic are elected in their order for 9 and 3 years; both enjoy stability during their term of office, unless they are removed for legal reasons and by means of a final judicial sentence (arts. 186 paragraph 2 and 192 paragraph 2 Cn.); Sent. Inc. 19-2012.
- b) Removal can only proceed for specific causes contained in the law and with the favorable vote of at least two thirds of the elected deputies (art. 186 Cn.). In this regard, there is unconstitutionality by omission, since there is no legislation on legal causes for removal of CSJ magistrates.
- c) The proposals for these dismissal decrees were introduced to the plenary with a waiver of procedure, a mechanism that is only used in cases

of extreme urgency according to Article 76 of the Rules of Procedure of the Legislative Assembly, which is developed by constitutional jurisprudence⁹

d) The rights and guarantees of due process were violated, as noted above, since they were not informed in advance of the charges against them; they were not heard and no sentence was reached in a trial or proceeding in which they were assured all the guarantees indispensable for their defense.

Regarding the appointments of the Magistrates that replaced the dismissed ones, it is important to mention that the decree of their proposals was introduced with dispensation of procedure; furthermore, they must be chosen from a list that will be sent by the CNJ. to the Legislative Assembly, formed in the manner stated in previous passages. The list will go to the political commission, which will conduct public interviews or appoint a subcommittee for that purpose. The purpose of the interviews is to listen to their projects within the Court and to verify their capacity and suitability for the position, this was not verified at any time. In addition to this, on June 30 of the same year, the Legislative Assembly appointed five new Supreme Court magistrates¹⁰, again bypassing the procedure of list formation by the CNJ; the deputies did not make public the criteria to determine why the chosen candidates are the most suitable.

Regarding this event, the report published by the Human Rights Institute of the Central American University stated the following:

"The unconstitutional and arbitrary dismissal of the legitimate magistrates of the Constitutional Chamber of the Supreme Court of Justice, carried out by the Legislative Assembly, without any debate in the plenary and without the right of defense of the magistrates, violates the principle of legality, the right of defense, the guarantees of due process, the principle of separation of powers, judicial independence and in general the respect for the rule of law. The reason for the dismissal was, in simple terms, the disagreement with the resolutions issued by the Chamber, particularly in the year 2020, as a result of the pandemic and the measures taken by the Executive. In continuation, the selection of the persons who would de facto replace the dismissed persons did not meet the basic characteristics of transparency".¹¹

Apart from being a violation of Article 172 of the Constitution, which states that magistrates and judges, with respect to the exercise of the jurisdictional function, are independent and are subject exclusively to the Constitution and the laws, it also implies that the legislature appointed 10 out of 15 magistrates when the law only allows the appointment of 5 each time the mandate is renewed.

Regarding the Attorney General, the Constitutional Chamber has also issued jurisprudential criteria on the stability that he/she must have (Inc. 29-2012, of 9/7/2012), and it has been considered that such stability is one of the guarantees of the principle of independence or autonomy that he/she must have.

3. Legislative Decree 144 of amendments to the Judicial Civil service Law

a) Contents of the decree

On August 31, 2021, the proposed decree to reform the Judicial Civil service Law was presented, whose content in summary is as follows:

a) It declared the immediate and mandatory dismissal of Magistrates and Judges, who are 60 years old or older, or have 30 years of service (Arts.

4 and 20 LCJ/ref.). Thus, one third of the judiciary was removed and replaced by other judges; this even though the Constitution of the Republic establishes that judges are appointed for life given their functional independence. They are irremovable in their positions, except in cases of crimes, infractions, and others that, according to the law, merit their removal.

b) Establishes a regime of availability for officials who wish to continue in office. The reforms empower the Supreme Court of Justice and the Attorney General to authorize, for reasons of necessity or specialty of the matter, the continuity of judges and prosecutors respectively, under this regime.¹² The availability regime means that the judges become part of a reserve resource that may be used discretionally by the Supreme Court, they may be sent to any judicial seat; the regime places the official in a situation of dependence completely on his judicial independence and his stability in the position.

He emphasizes that the decree did not regulate the terms of the availability regime, an omission that the Court filled by full Court Agreement¹³; thus, five years of availability were granted to the judges who submitted themselves to availability.

c) Transfers no longer operate in the cases and procedures established by law, which granted a scope of protection in accordance with the stability in the position; with the reform, the decision regarding transfers is only left to an Agreement of the plenary of the Supreme Court, which lends itself to arbitrariness, using the transfer as a punishment for critical Judges who cling to their judicial independence, as will be seen below (Arts. 4 and 6 lit. f and 9 LCJ).

d) A new structure of classes and categories of officials is established (Art. 13 LCJ/ref.). Most of the categories are practically eliminated; this has to do with the operability of transfers, as will be seen later.

It is important to mention that, in the application of the decree, the option of resignation was transferred to the Magistrates and Judges affected by the Decree, in exchange for a bonus of 24 months of salary for retirement¹⁴, which is not contemplated in the reform decree. Strictly speaking, this resignation is invalid and has no legal effect, since it lacks one of the intrinsic elements of any act or declaration of will, which is free consent, without pressure of any kind.

b) Unconstitutionality of the decree

Decree 144 of amendments to the LCJ, dated 08/31/2021 is unconstitutional for the following reasons:

a) There is a violation of the principle of separation of powers by disrespecting the initiative of law (Art. 133 ordinal 3° Cn.). The previously cited provision, in the case of laws related to the Judicial Branch, grants the CSJ exclusivity of the initiative of law; notwithstanding, the initiative of law for the approval of the decree was exercised by Deputies of the New Ideas party, the President's party.

b) One of the mechanisms was used to waive the procedure for the presentation of the decree, which is improper and only viable in cases of urgency according to article 76 of the RIAL.

c) Non-compliance with the obligation to request a list of three candidates to the CNJ. Art. 182 rule 9 Cn., in relation to art. 62 LCNJ.

d) Disrespect of the CNJ's attribution to form a shortlist and send it to the Court, based on art. 187 Cn., related to art. 62 LCNJ.

e) Violation of the right/guarantee of judicial independence, Arts. 172, paragraph 3° and 186, paragraph 4° Cn.

f) The right to job stability is not respected. Art. 186 paragraph 4 Cn.

g) International Conventions and Treaties in force in El Salvador (Art. 144 Cn.), related to: Judicial independence, stability in office and protection of the elderly.

In view of the above, obvious, violations of the Constitution and conventional law, a legal and ethical action would have been for the Supreme Court of Justice, as the court in charge of applying

the decree, to declare the inapplicability of Decree 144 through a review of constitutionality and conventionality, taking art. 185 Cn. as a reference, since the review of constitutionality is not exclusive to Judges, but also to all public officials, as is clear from art. 235 Cn.

As a consequence of the above context, judicial independence as a right/guarantee of citizens has been greatly affected. Transfers are used to influence the administration of justice. The crisis provoked by the political bodies with their interference within the Judiciary has led to the serious affectation of judicial independence, as a right, not of the Judge, but of the citizen to count on honest and independent Judges.

4. Appointments, promotions and transfers of Judges and Magistrates in application of decree 144

Paragraph 3 of Article 9 of the reform decree establishes that: "The Supreme Court of Justice is empowered to make the necessary and indispensable transfers and appointments in the vacant seats...". Of course, this power is direct,

without respecting the intervention that the CNJ is assigned by constitutional provision (arts. 181 rule 9 and 187 Cn.). This has allowed a discretionary and arbitrary handling of these figures, as follows:

a) Appointments

The appointments of Magistrates and Judges that replaced those who resigned, as well as the new appointments to the Judicial Civil service, have skipped the procedures that would allow for the examination of the capacity, experience and suitability for their respective positions; there was also no transparency in the appointment process of the judges appointed after the reform carried out by the Legislative Assembly. The names were published, but not the merits of the appointment.¹⁵ Likewise, the appointment of relatives of Supreme Court Justices in different judicial offices has been publicized¹⁶.

The Supreme Court of Justice has declared as reserved information the curriculum vitae of the

new judges appointed after the issuance of Decree 144 on August 31, 2021¹⁷, thus committing a violation of the Law of Access to Public Information (LAIP) and the right of citizens to know the suitability and competence of judges; knowing who is the judge who will judge a case is a requirement of the due process and the guarantee of the natural judge,¹⁸ also allows the judge to be recused when a motive or cause that compromises his impartiality is suspected.

With the implementation of the regime of exception as of March 27, 2022¹⁹, criminal reforms have recently been approved in which the figure of the "faceless judges" has been introduced, prohibited by the jurisprudence of the Inter-American Court of

Human Rights .²⁰ also approved the trial without the presence of the accused.²¹ Another set of criminal reforms enables the realization of massive trials in which up to 900 defendants may be tried in a single case²² , without using the power to declare the inapplicability of laws that violate the Constitution of the Republic²³ .

In 2024, the Legislative Assembly will elect one third of the magistrates of the Supreme Court of Justice. The CNJ delivered the list of eligible professionals (Special Registry of Eligible Lawyers) and the Electoral Roll to FEDAES. ²⁴

Justice Óscar López Jerez, who serves as President of the Supreme Court of Justice and of the Constitutional Chamber, completes his term on June 30, 2024, along with Justices Sergio Luis Rivera, Paula Patricia Velásquez, Dafne Yanira Sánchez and Leonardo Ramírez. ²⁵

Civil society organizations have identified that several of the professionals included in the list sent by the CNJ are related to the political power ruling.²⁶

b) Promotions

In many cases, due to the application of the decree of reforms, even violating the same with respect to the new categorization of officials, Justices of the Peace have been appointed in Chambers of Second Instance ignoring the intermediate categories; Judicial Collaborators without experience in the Judiciary as Judges of First Instance or of the Peace.

All this without being subject to the procedure that the Constitution and the law must apply, without the verification of the requirements of capacity and suitability for the positions, omitting to inform about the attestations of those appointed when they have been requested by the press or social organizations.

c) Transfers as instruments of punishment

Something that has become increasingly evident during the last few months is the fear of judges to rule against the interests of the Executive, for fear of losing their jobs, being transferred as a punishment, even being criminalized and being forced to leave the country.²⁷

The use of transfers for political interests unrelated to the exercise of the jurisdictional function has been denounced²⁸ . Likewise, illegal and arbitrary transfers of judges have been made in order to dismantle key offices in the administration of justice.²⁹

A judge consulted, who was promoted to first instance, and who worked in one of the specialized courts of instruction of the department of San Miguel, created to operate under the guidelines of the regime of exception emanating from the

Executive, a few months after taking up his new position was returned to his former Peace Court, for favoring with alternative measures to detention, in one specific case favouring a pregnant woman accused of Illicit Groupings; in another case a man with severe renal insufficiency who needed to attend dialysis sessions, also accused of Illicit Groupings.

It should be mentioned that the elimination of almost all the categories that before the reforms were found in each class of judicial officers, allows that a Magistrate or Judge that before was in the judicial metropolitan area -which is the highest category-, can be transferred to any judicial seat regardless of their geographical location, being able to be far from their domicile, because it is the same category; this is a degradation and a disregard of the



achievements, that by merit and time, they had accomplished.

d) Removals

A judge who served in the Environmental Court of the city of San Miguel, with jurisdiction over the entire eastern zone of El Salvador, was arbitrarily removed. One of the decisions that cost him his position was his accusation of the Ministry of Public Works, which he claimed had built a dam without environmental permits in the Goascorán river, in the municipality of Pasaquina, La Unión. In addition, he ordered precautionary measures in

87 municipalities in the eastern zone, due to the damage they were causing to the environment. This judge also previously found the National Administration of Aqueducts and Sewage (ANDA) responsible for being one of the major polluters of the Río Grande de San Miguel by dumping wastewater on it, according to newspaper reports.³⁰ The judge was removed from office on August 31, 2022.

e) Mechanism to control the work of judges

One of the aspects that has been shown from the co-optation of the institutions of justice by the current government is the control of the work of judges by the Supreme Court and the Executive, for which the Attorney General's Office is used as the main instrument. Criminal law is being used by the executive power to deal with criminal matters. In the case of judges who are less than 60 years old and were not affected by the reforms to the Judicial Civil service Law, they are forced to resolve in a specific way to maintain their positions.

Judges consulted reported that this control is exercised in the following way: When a prosecutor arrives to present an injunction against gang members or someone who is a political opponent or critic of the government, he first asks to speak with the judge in his office, there he tells

him the instructions he brings from the superior prosecutor about what he must resolve, who he is going to leave in provisional detention and to whom he can grant alternative measures to detention; if the judge deviates from these instructions, and considerably affects the prosecutor's claim, he informs his superior, who informs the Attorney General who informs the Court of the judge's actions, who ends up being transferred to another court of lesser relevance. If the case is relevant and mediatic, there is even political pressure on the Court to take disciplinary measures against the Judge.

For its part, the public defender's office, overwhelmed in its capacity to handle cases, does not intervene in favor of judicial independence.

g) Security situation of independent judges.

After the irregular dismissals of magistrates of the Constitutional Chamber of the Supreme Court of Justice and of the Prosecutor, concerns have been expressed regarding the physical integrity of these and other justice operators who have been critical of the measures adopted.³¹ Likewise, there have

been proposals for populist regulatory reforms on judicial delay, imposing fines and other measures that threaten the exercise of the jurisdictional function.³² Likewise, harassment and intimidation actions have been carried out in the homes of justice operators.³³

On the other hand, judges and magistrates who have demonstrated political affinities with the current government are not being removed from their positions. On the contrary, they are being rewarded with salary increases, as denounced by the Union of Judicial Employees of El Salvador (SEJES), increases directed exclusively to judges and with retroactive effects.³⁴ The same elimination of

categories has the purpose of rewarding and buying with better salaries the will of the Judges; he detailed that through the orders of the new authorities of the Court, imposed by the ruling party on May 1 of this year, a system of categorizations has been implemented with the intention of benefiting those who are close to the new administration.

5. Affectations to the administration of justice

There are many complaints from users of the justice administration system regarding the performance of the new judges appointed during the emergency regime, to the point of considering that the rule of law in El Salvador is dead; many of these disagreements have been documented by investigative journalistic reports.³⁵

The deterioration in the administration of justice has to do, on the one hand, with the appointment of judges who do not meet the requirements of capacity, suitability and experience for the position, but it is also due to the subjugation as a condition of their appointment and permanence in office.³⁶

Judicial independence is respected when judges decide their cases without any interference from hierarchical superiors within the judicial structure, nor external interference from politicians or power groups, prevailing only their sound judgment and knowledge of the law. The executive and legislative powers try to influence emblematic cases of environmental justice in which powerful business groups from the construction sector have an interest, as well as cases of serious human rights violations committed during the armed conflict of 1980-1991, in which the government army of that time was involved. One of the most relevant cases of environmental justice is the case of the Sensunapán-Banderas watershed, in the western part of the country, in which the previous Magistrates replaced had issued precautionary

measures prohibiting the Ministry of Environment to grant construction permits, due to its importance for the ancestral peoples; at this point, according to an investigation by the digital magazine Acento³⁷, the new magistrates decided to file the case and consider the measures to have been complied with. Another protection measure eliminated by the new environmental magistrates is the halt to the construction of a highway that would affect the natural protected area of El Espino, in San Salvador. The current magistrates removed this measure in February 2022.

Another emblematic case related to the crimes of the 1980-1991 internal armed conflict is the case of the "El Mozote Massacre and surrounding areas; Up to the time of the forced retirement of Judge Jorge Guzmán due to the reforms to the Judicial Civil service Law, the case had experienced significant progress, to the extent that the accusers and victims were enthusiastically expressing that they had already had enough evidence to move on to the stage of public trial; however, with the departure of Judge Guzmán and the arrival of his replacement, the case stagnated in its progress, using strategies to delay it.

The First Chamber Against Organized Crime of San Salvador, found the prosecutor's indictment against a man detained under the exception regime and accused of Illicit Groups to be weak, because there was no information linking the accused to the gang

that the Attorney General's Office (FGR) related him to.³⁸ In view of this decision, despite the fact that these Magistrates enjoy the protection of the Magistrates of the Tax Court, two of them were

transferred out of the capital and the other one to her previous court. In this way, this important group in the fight against impunity was strategically dismantled.

6. Resistance to decree 144 reforming the LCJ

a) Resolution of the Constitutional Chamber annulling the removals of 01/5/2021.

The crisis of judicial independence began on May 1, 2011, when the Legislative Assembly decided to remove the Magistrates of the Constitutional Chamber. In response to such removal, the Constitutional Chamber on the same date issued resolution 1-2021 "Injunction of Unconstitutionality", declaring the removal decree unconstitutional. The legitimate Chamber expressed that the organ of the government to which the Constitution attributes the function of controlling the constitutionality of the acts of the Legislative Assembly is the Constitutional Chamber, and that the resolution is issued with the purpose of avoiding the de facto consummation of the rupture of the constitutional order, since with the removal decision the Assembly had violated:

The Constitution of the Republic of Panama states: "the republican, democratic and representative form of government and the pluralist political system (Article 85 of the Constitution). This is because, with a marked intention of suppressing effective controls over the Executive and Legislative Branch, it negatively affects the control of the exercise of power carried out by this chamber, which is necessary for a Republic, for the defense and guarantee of the substantial element of a democracy (fundamental rights, which are also part of the political system) and to ensure a representative democracy compatible with the Constitution".

The resolution was not obeyed at the time, and the Assembly, the Court and the Executive are still in a state of disobedience, because it is a valid and effective resolution.

b) Preliminary injunction suspending the reforms to the Judicial Civil service Law.

On September 21, 2021, a request for precautionary measures was filed before the Family Chamber of San Miguel, requesting the immediate suspension of the enforcement of the reforms to the LCJ contained in Legislative Decree N°144 dated 08/31/2021; to the effect that the affected judges and magistrates continue in their positions; that the Supreme Court of Justice refrain from appointing or transferring Judges and Magistrates. In response to the request, the Presiding Judge of the Chamber resolved the following day in favor of the petitioners, ordering the Supreme Court of Justice to suspend the application of DL. 144 and ordered the Legislative Assembly, the Supreme Court of

Justice and the President of the Republic to refrain from carrying out acts that contravene the human rights of the petitioning Judges, as well as the human rights of the elderly who hold the position of Judges and Magistrates. The resolution, despite the fact that it does not allow appeals, was first appealed by both the Supreme Court of Justice and the Presidency of the Republic, through their attorneys-in-fact; and so far the appeals have not been resolved. The appeals filed indicate that the resolution is valid; furthermore, in the case of precautionary measures, its application is immediate and cannot be suspended by the



appeals, so that it is a valid resolution, in force, which is being disobeyed.

c) Complaint before the Inter-American Commission on Human Rights.

On September 17, 2021, the organizations CRISTOSAL and FUNDE filed before the Inter-American Commission on Human Rights (IACHR) a complaint against the State of El Salvador for the violation of human rights enshrined in the American Convention on Human Rights, in which they requested:

That the Salvadoran State be requested to suspend the reforms to the Judicial Civil service Law, in the event that they enter into force and take effect, that the State of El Salvador be requested to reinstate the judges, magistrates and magistrates affected by the reform to the Law, and that the State of El Salvador be requested to comply with the measures ordered.

To date, the IACHR has acknowledged receipt of the complaint and has asked the Government of El Salvador for a report on the complaint filed, in addition to having held a virtual hearing with the

parties, without there being a pronouncement of admissibility.

The complaint is currently under analysis by the IACHR. Additionally, on March 16, 2022, at the request of FECAJUD and other organizations, the IACHR held a public hearing to discuss the problems of judicial independence faced by El Salvador. At that hearing, multiple petitioning organizations presented their arguments regarding the events and regulatory reforms that took place in 2021 that constitute a co-optation of the judiciary to avoid checks and balances and allow for the unprotection of human rights.³⁹ In this regard, the State offered an opposing narrative indicating that the measures had been taken in order to strengthen and modernize the justice administration system.

d) Public protest by justice operators and civil society.

The day after Decree 144 of reforms to the Judicial Civil service Law was issued, Chamber Magistrates, First Instance Judges and Justices of the Peace, close to the capital and many who traveled from other departments went to the facilities of the Isidro Menéndez Judicial Center, in San Salvador, to express their rejection to the reforms to the Judicial Civil service Law approved by the Legislative Assembly, to express their rejection of the reforms to the judicial civil service law approved by the Legislative Assembly, exposing in a public statement the reasons for the unconstitutionality of the

decree, and then delivering this written statement to the Supreme Court, the Legislative Assembly and the presidential palace. Since then, the independent administrators of justice have participated in different protest marches, press conferences and communiqués, not only asking for the repeal of Decree 144, but also the reinstatement of the Magistrates of the Constitutional Chamber, the respect for judicial independence, the separation of powers and the constitutional order. Different civil society organizations have also joined this struggle.

e) Reaction of the international community

International bodies such as the IACHR have issued statements on the dismissal and appointment measures taken by the Legislative Assembly on May 1, 2021 and the untimely regulatory reform carried

out through Decrees 144 and 145.⁴⁰ These communiqués warn about the affectations to the principle of separation of powers and judicial independence, attacking against the Basic Principles

on the Independence of the Judiciary of the United Nations, specifically those guarantees that the State must provide to the irremovability of judges.⁴¹ They also imply a violation of the Universal Statute of the Judge, which prohibits retroactive effects on changes in the retirement age.⁴² Additionally, the UN, the OAS, the European Community, as well as several national and international human rights organizations, have spoken out against the reforms,

dismissals and appointments without transparency or motivation.⁴³

The President and the governing parties, in the face of criticism from the international community, claim that the measure was taken to mitigate the phenomenon of corruption in the judiciary, without informing or providing support for this assertion.⁴⁴

III. Current state of the separation of powers

1. On the separation of powers

There is no true separation of powers without judicial independence. As an example of the environment of undue interference of the executive power and political parties in the judiciary, is the approval of presidential reelection, made shortly after in a sentence by the new Constitutional Chamber imposed, despite being expressly prohibited by the Constitution. The magistrates appointed after the dismissals of the Constitutional Chamber opened the door to this figure of presidential reelection for the period beginning in 2024, in clear contravention of several articles of the Constitution (152.1 and 154, among others).⁴⁵

All that has been analyzed so far allows us to sustain that the separation of powers in El Salvador has been reduced or almost disappeared, and only operates when the other organs debate matters in which the Executive has no interest. The sovereign power that should be exercised by three different organs under the attributions and limits indicated in the Constitution of the Republic, has been concentrated in only one organ, the Executive, more precisely in the person of the President; the other organs only bow to his purposes; the balance that should exist in the exercise of power through the system of weights and counterweights has been

practically annulled. The absence of separation of powers, of a functional balance between them, is highly detrimental because there is a lack of inter-organic control. Since the Judicial Branch, mainly the Constitutional Chamber, has been annulled, there will be no one to stop the abuses of power by the political bodies, no one to watch over the protection of the rights of citizens and civil society.

As a consequence of all this context, judicial independence as a right/guarantee of the citizens has also been greatly affected. The crisis provoked by the political bodies with their interference within the Judiciary, has led to the serious affectation of judicial independence.

Referring to the recently approved exception regime at the request of the Executive, a magistrate of the Constitutional Chamber since 2018 and irregularly dismissed in 2021 in 2021, he states that *"the absence of judicial independence has led to arbitrariness that affects the population, for example, the approval of two exception regimes that suspend four constitutional guarantees"*.⁴⁶

The judges appointed prior to Decree 144 and who were not immediately affected by this⁴⁷, exercise their function with fear, aware that, as never



before, the Supreme Court and the same monitoring apparatus of the Executive is pending their actions; the approach that independent judges try to have with them is avoided; the situation of the independence of the judiciary and the defense of the Constitution, are for them forbidden subjects.

As an example of the above, the case of the massacre perpetrated in El Salvador 1981 known as El Mozote, in which 800-1000 people were murdered, was in the knowledge of Judge Jorge Guzmán, who declared himself dismissed due to DL 144, not submitting himself neither to resignation nor to availability regime because he considered it an unconstitutional Decree; his retirement has caused a judicial delay in an emblematic process for the stability of peace in El Salvador.⁴⁸ The current high command of the Armed Forces did not comply with the judicial decisions to open the military archives, thus favoring the military accused of the massacre. On this case there was already a sentence of the IACHR Court in 2012 that ordered to investigate the massacre and provide all kinds of public information, including military information, a sentence to which the State has not fully complied, and as a result of the separation of Judge Guzman that regional Court has ordered a reinforced supervision.

The current co-optation of the Judicial Branch is creating a severe impact on the protection of

human rights, due to the absence of an independent justice system that controls and generates a counterweight to the abuses of the political powers; The restriction or limitation of procedural guarantees, as well as the denial of the right of defense from the moment of detention, or the information of charges to the detainee or his relatives about his safekeeping, are examples of the excesses of the punitive power of the State, implemented during the emergency regime that is already in its third month of validity; on which there is no Constitutional Chamber or Judges to pronounce against due to its evident contrast with the constitutional text. It is evident the loss of confidence in the judicial system by lawyers in the free practice of the profession and the critical professional sector, since any action that may be attempted against officials or persons protected by the government will not be attended. There is a deterioration in the quality of the administration of justice, due to the fact that the judges appointed have not been subjected to evaluation or selection processes, the predominant criterion for their appointment being their commitment of loyalty to the ruling party. A state of legal uncertainty has been created regarding the validity of the decisions adopted by persons who have come to occupy judicial offices without following the constitutional and legal procedures.

2. International assistance CICIES

The Ministry of Foreign Affairs terminated the cooperation agreement with the International Commission against Impunity in El Salvador (CICIES) at the instruction of the Attorney General appointed through irregularities on May 1, 2021. This institution had been contributing to efforts to dismantle corruption structures in the country for two years, participating in investigations of more than 105 state entities.⁴⁹ The government's official statement justifies the termination due to the

involvement of former mayor Ernesto Muyschondt, who is linked to judicial processes for multiple crimes. The Organization of American States expressed concern about this matter.⁵⁰

The report *El estado de los derechos humanos en el Salvador* prepared by the Observatorio Universitario de Derechos Humanos (OUDH) of the Universidad Centroamericana (UCA) concludes that the Supreme Court of Justice was co-opted by the

executive power, to the extent that its members are political operators.⁵¹ The First, Second and Third Criminal Chambers have been questioned for lack of independence. Several of its members were appointed after the entry into force of DL 144, and once in office they proceeded to modify procedural decisions and substantive decisions regarding existing processes.⁵²

The public information agency, in charge of implementing the public information and transparency law, suspended all hearings invoking the Covid-19 emergency. Likewise, a controversial regulation was approved that granted immunity to all contractors and officials who were managers of the measures to mitigate Covid-19 for criminal or administrative matters.⁵³ This legislative measure protects Health Minister Francisco Alabí and the President's Chief of Staff, Carolina Recinos, both of whom have been named in journalistic investigations for corruption related to purchases and special pandemic funds; Recinos is among the Salvadorans sanctioned by the United States following their inclusion in the so-called Engel List⁵⁴. Prosecutor Melara was investigating six officials accused of corruption, including the Minister of Health, for unjustified purchases and contracts related to the Covid-19 response. Through the reforms to the Organic Law of the Attorney

General's Office (Ley Orgánica de la FGR) strategic criminal investigation structures were dismantled for this purpose.

There is no doubt that the subjugation achieved by the Executive of the other two branches of government, as well as of all those institutions called to exercise a comptroller of governmental management, such as the Attorney General's Office, the Institute of Access to Public Information, the Governmental Ethics Tribunal, etc., have set the stage for the Judicial Branch at all levels to become an accomplice or participant in governmental corruption, have set the stage for the Judicial Branch at all levels to become an accomplice or participant in government corruption, which was pointed out a few months after the installation of the current government, within the framework of the budgetary measures taken to address the health emergency caused by Covid-19, as well as the territorial control plan. It is foreseeable then, that any action that could be attempted to investigate all the allegations of corruption, mainly those investigated by the CICIES, would be frustrated first by the Attorney General's Office of the Republic, which has dismantled the units that investigated cases of corruption of public officials, also archiving the files of investigations presented by the Commission against corruption mentioned above.



IV. Conclusions

Judicial independence in El Salvador, two years after the first report on this issue, has deteriorated even further with measures and penal reforms aimed at consolidating the control of the Supreme Court and the Executive over the work of judges, in order to effectively combat gang crime with strategies such as the regime of exception, contrary to constitutional precepts and the standards set forth in human rights treaties and conventions.

Judicial independence continues to be affected to a greater extent, as a right/guarantee of the citizens, with selective justice being administered, with constitutional and instance judges who rule according to the instructions of the Executive; the Judge who clings to make his judicial independence prevail is removed or transferred to judicial headquarters where he does not represent a hindrance.

The Supreme Court of Justice has declared as reserved information the curriculum vitae of the new judges appointed after the issuance of Decree 144 on August 31, 2021⁵⁵ [1], as well as the appointment of the "faceless judges" during the regime of exception, thus committing a violation of the Law of Access to Public Information (LAIP) and the right of citizens to know the suitability and competence of judges, as well as to recuse them.

During the last few months, the fear of judges to rule against the interests of the Executive has become more and more evident, for fear of losing their jobs, being transferred as a punishment,

even being criminalized and having to leave the country.

The Supreme Court and the Executive have been exercising control over the work of the judges, using the Attorney General's Office as the main instrument; if the judge deviates from the instructions of the Attorney General's Office on how to resolve the case, affecting the prosecutor's claim, the judge informs his superior, who informs the Attorney General and the latter informs the Court of the judge's actions, who ends up being transferred to another court of lesser relevance where he is less of a hindrance.

The deterioration in the administration of justice has to do, on the one hand, with the appointment of judges who do not meet the requirements of capacity, suitability and experience for the position, but it is also due to the subjugation as a condition of their appointment and permanence in office.

The strategy of the current government continues, in complicity with the Supreme Court as its ally, to control emblematic cases of environmental justice and the investigation of serious crimes against humanity committed during the internal armed conflict of 1980-1991, pushing them back or stalling their progress. In terms of environmental justice, there is a lack of follow-up on emblematic environmental cases, the failure to open cases informally, and a passive role in the face of extensive land urbanization and contamination.

Endnotes

¹Constitution of the Republic of El Salvador, Art. 172. *The Supreme Court of Justice, the Chambers of Second Instance and the other courts established by secondary laws make up the Judicial Branch. The power to judge and enforce judgments in constitutional, civil, criminal, mercantile, labor, agrarian and contentious-administrative matters, as well as in others determined by law, corresponds exclusively to this organ.*

The organization and functioning of the Judicial Branch shall be determined by law.

The Magistrates and Judges, with respect to the exercise of the jurisdictional function, are independent and are subject exclusively to the Constitution and the laws. THE JUDICIAL BODY SHALL HAVE AN ANNUAL ALLOCATION OF NOT LESS THAN SIX PERCENT OF THE CURRENT INCOME OF THE STATE BUDGET.

² Inc. 30 - 2012 dated April 17, 2018.

³ <https://www.csj.gob.sv> | CSJ Advisory Council analyzes solutions to reduce judicial delays.

⁴EFE Agency. San Salvador. 09/05/2020.

⁵*El Salvador y el falso discurso por la independencia judicial*, Úrsula Indacochea Prevost, (March 25, 2022): <https://dplfblog.com/2022/03/25/el-salvador-y-el-falso-discurso-por-la-independencia-judicial/>

⁶ Tweets by Nayib Bukele: <https://twitter.com/nayibbukele/status/1441505855904653321?lang=en>

⁷*El Salvador: New Laws Threaten Judicial Independence*, Human Rights Watch (September 2, 2021): <https://www.hrw.org/es/news/2021/09/02/el-salvador-nuevas-leyes-amenazan-la-independencia-judicial> Véase also: Decision of the Constitutional Chamber of the Supreme Court of Justice, 148-2020, based on *habeas corpus* principles contained in the Constitution (March 26, 2020):

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⁸Publication of the Digital Newspaper El Mundo dated 05/21/2020.

⁹ Ruling of unconstitutionality 6-2016/2-2016, dated 09/02/2018.

¹⁰ <https://www.revistafactum.com> | Publication June 30, 2021.

¹¹*IDHUCA publishes report "The Capture of the Judiciary in El Salvador"*, Heinrich Boll Stiftung (December 7, 2021): <https://sv.boell.org/es/2021/12/07/idhuca-publica-informe-la-captura-del-organo-judicial-en-el-salvador>

¹²*Security Minister's father to continue as Chamber Magistrate in San Miguel*, El Salvador (September 28, 2021): <https://www.elsalvador.com/noticias/nacional/padre-ministro-seguridad-magistrado-camara-san-miguel/883830/2021/>

¹³ Minutes No. 74 of the Plenary Court of 17/09/2021, posted on the CSJ website.

¹⁴Minutes No. 74 of the Plenary Court of 17/09/2021, posted on the CSJ website.

¹⁵*El Salvador: new judges sworn in amid controversy*, DW, (September 27, 2021): <https://www.dw.com/es/el-salvador-juramentan-a-nuevos-jueces-en-medio-de-polémica/a-59321533> See also: Supreme Court's "excuses" for not informing why it chose 98 new judges, El Salvador (November 15, 2021): <https://www.elsalvador.com/noticias/nacional/destitucion-de-jueces-csj-golpe-corte/900634/2021/>

¹⁶ FACTUM Magazine research publication of 11/15/2021.

¹⁷ <https://acento.com.do/actualidad/jueces-a-la-medida-la-farsa-de-la-depuracion-de-bukele-9224286.html>

¹⁸ <https://www.diarioconstitucional.cl/articulos/la-garantia-constitucional-del-juez-natural/>

¹⁹ Legislative Decree No. 333 dated March 27, 2022.



²⁰ *Jueces sin rostro y otras violaciones a la garantía de juez independiente e imparcial, (In)debido proceso* Análisis de las reformas que acompañan el régimen de excepción en El Salvador, Fundación para el Debido Proceso: https://dplf.org/sites/default/files/jueces_sin_rostro_-_detencion_provisional_-_indebido_proceso_-_analisis_reformas_el_salvador.pdf see also: Jueces sin rostro vulneran garantías judiciales, dice Fundación para el Debido Proceso,

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²¹ <https://ysuca.org.sv/2022/06/figura-de-jueces-sin-rostro-es-inconstitucional-segun-cristosal/>

²² <https://elpais.com/internacional/2023-07-27/juicios-masivos-en-el-salvador-de-bukele-una-ley-permitira-audiencias-de-hasta-900->

²³ Within the power to administer justice, it is incumbent upon the courts, in cases in which they are called upon to pronounce judgment, to declare the inapplicability of any law or provision of other organs contrary to constitutional precepts.

²⁴ CNJ delivered registry of eligible professionals for CSJ judgeships, El Salvador, March 13, 2024: <https://www.elsalvador.com/noticias/nacional/cnj-entrego-registro-de-profesionales-elegibles-para-magistraturas-la-csj/1129346/2024/>

²⁵ Presidency of Supreme Court of Justice could change as of July 1, 2024, La Prensa Gráfica, March 5, 2024: <https://www.laprensagrafica.com/elsalvador/Presidencia-de-Corte-Suprema-de-Justicia-podria-cambiar-a-partir-del-1-de-julio-de-2024-20240305-0064.html>

²⁶ CNJ defines list of 70 candidates for Supreme Court magistrates, La Prensa Gráfica, April 29, 2024: <https://www.laprensagrafica.com/elsalvador/CNJ-define-listado-con-70-candidatos-a-magistrados-de-la-Corte-Suprema-de-Justicia-20240429-0081.html>

²⁷ <https://www.resumenlatinoamericano.org/2022/07/14/el-salvador-existe-algo-en-comun-en-los-jueces-del-pais-el-miedo/>

²⁸ *Judge Juan Antonio Durán denounces transfer "in retaliation for criticism" against coup against the Judicial Branch*, El Salvador (September 26, 2021): <https://www.elsalvador.com/noticias/nacional/juez-juan-antonio-duran-denuncia-traslado-represalia-criticas-golpe-judicial/883125/2021/>

²⁹ *ALAC: Supreme Court of Justice without supporting the transfer of judges*, La Prensa Gráfica (February 9, 2021): <https://www.laprensagrafica.com/elsalvador/ALAC-Corte-Suprema-de-Justicia-sin-sustentar-traslado-de-jueces-20220208-0078.html>

³⁰ <https://www.laprensagrafica.com/elsalvador/Remueven-a-juez-ambiental-de-San-Miguel-20220901-0087.html>

³¹ *Regional Federation condemns attack on two judges*, El Salvador (December 9, 2021): <https://www.elsalvador.com/noticias/nacional/jueces-condena-ataque-juzgadores/908145/2021/>

³² *Judges question proposal to reduce judicial delinquency*, La Prensa Gráfica (February 5, 2022): <https://www.laprensagrafica.com/elsalvador/Jueces-cuestionan-propuesta-para-reducir-mora-judicial-20220204-0084.html>

³³ <https://www.laprensagrafica.com> || Publication dated September 19, 2021.

³⁴ *Union of judicial workers denounces salary increase only for judges*, El Salvador (November 15, 2021): <https://www.elsalvador.com/noticias/nacional/sinditaco-trabajadores-judiciales-denuncia-aumento-salarial-jueces/900519/2021/>

³⁵ <https://www.revistafactum.com/jueces-del-regimen/>

³⁶ <https://acento.com.do/actualidad/jueces-a-la-medida-la-farsa-de-la-depuracion-de-bukele-9224286.html>

³⁷ <https://acento.com.do/actualidad/jueces-a-la-medida-la-farsa-de-la-depuracion-de-bukele-9224286.html>

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⁴⁷ Note: These judges will be affected in the future when they reach the age of 60, or by a transfer based on the current categories; for now there is only the fear that their resolutions will not be to the liking of the Executive and the CSJ, or the effects if the reforms are criticized.

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