



Panamá

JUDICIAL INDEPENDENCE ASSESSMENT

SEPTEMBER 2024



CYRUS R. VANCE CENTER
FOR INTERNATIONAL JUSTICE



FECAJUD

Panama

Judicial System Assessment in Central America and the Caribbean

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Last update: September 2024



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 dialogues with the national and international community.

The diagnosis summarizes the main normative aspects of the functioning of the Judicial Branch in Panama, as well as 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, physical and legal security of judicial operators, interference of other branches of government in the administration of justice, cases of corruption and 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 is a production of the Central American Federation of Judges for Democracy FECAJUD as part of a project to strengthen the 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).

Although Panama is not part of FECAJUD, it is considered relevant to maintain knowledge and make visible what is happening in the countries of the region.

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, 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 *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. The Judiciary in Panama

The Judicial Branch is made up of the Supreme Court of Justice, the superior courts, the circuit courts and the municipal courts established by law.¹

For jurisdictional purposes, the national territory is made up of four Judicial Districts, which in turn are divided into Judicial Circuits, and the latter into Judicial Municipalities. The First Judicial District

comprises the provinces of Panama, Colon, Darien and the Comarca of San Blas. The Second Judicial District comprises the provinces of Cocle and Veraguas; the Third Judicial District comprises the provinces of Chiriqui and Bocas del Toro and the Fourth Judicial District comprises the provinces of Herrera and Los Santos.

1. Nomination, selection and appointment of magistrates and judges .

One of the recurrent problems in different jurisdictions in Central America is the influence of other public powers, political actors and the private sector in the nomination, election or designation and appointment of judges and magistrates in order 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. Likewise, there is a problem of trust in the judiciary on the part of the 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

The Constitution of the Republic of Panama provides that the Supreme Court of Justice shall be composed of the number of Magistrates determined by law, appointed by agreement of the *Consejo de Gabinete* Cabinet Council, subject to the approval of the Legislature, for a term of ten years.²

of ten years during which he/she has exercised indistinctly the profession of law, any position in the Judicial Branch, the Public Ministry, the Electoral Tribunal or the Ombudsman's Office that requires a university degree in law, or having been a professor of law in a university teaching establishment."

The Constitution also provides that the appointment of magistrates shall be made every two years, except in cases in which, due to the number of magistrates on the Court, more or less than two magistrates are appointed. The principle of staggered appointments should also be maintained, through appropriate legislation, in cases where the number of judges of the Court is increased.³

Recently, the number of magistrates that compose the Supreme Court has not been modified, but there has been interference by the Executive Branch by proposing, through the *Consejo de Gabinete*, candidates for Magistrates of the Supreme Court of Justice who are related to the government of the day. It has also happened that, due to disputes between the branches of government, the Legislative Branch has not ratified candidates proposed by the Executive Branch. This reveals strong defects in the system of designation and appointment of magistrates.

On the other hand, Article 204 of the Constitution contains the requirements established to be a justice of the Supreme Court of Justice, which include being Panamanian by birth, being at least thirty-five years old, being a lawyer and "[h]aving completed a period



Alejandro Moncada Luna was appointed as magistrate of the Supreme Court of Justice in 2010, and then in 2015 sentenced by the *Subcomisión de Garantías de la Asamblea Nacional* for ideological falsehood and illicit enrichment.⁴ Right after that, magistrate Víctor Benavides resigned from the Supreme Court after being accused of money laundering, corruption and illicit enrichment. The nomination process of the magistrates who would replace them has been described as not very transparent, and as one in which decisions were not made based on merit and experience.⁵ In fact, the *Asamblea Nacional* received 25 criminal complaints against magistrates of the Supreme Court of Justice, especially in relation to the President of this court, José Ayú Prado. These problems in the exercise of jurisdictional functions demonstrate that there were problems in the suitability of the candidates appointed and that a more robust system could have prevented these events. In 2009, multiple civil society organizations presented their observations precisely on the lack of suitability of candidates Moncada and José Abel Almengor, who resigned from his post nine months after taking office due to serious accusations of corruption.⁶

Several organizations have highlighted the problems with the model of selection of magistrates in Panama, which includes the intervention of the *Consejo de Gabinete* (Executive) and approval of the Legislative Body (*Asamblea Nacional*) as a system in which the three branches of government are present. There is no pre-established objective process, nor evaluation of the merits of the

candidates, which is open to public scrutiny and guarantees appropriate appointments to the highest court.⁷ What the organizations that have studied the matter highlight the most is the lack of transparency in the process, for example through public hearings, together with the lack of mechanisms that guarantee a selection based on merit and not on political influences or individual interests.

Former President Ricardo Martinelli eliminated a procedure called State Pact for Justice (*Pacto de Estado por la Justicia*) that established minimum conditions to guarantee the suitability of candidates in terms of capacity and integrity.⁸ Some of the additional points pointed out by the organizations is the lack of intervention of a body independent from the public power in the pre-selection of candidates, as well as the absence of clear profiles and a detailed process.

The selection of Supreme Court of Justice magistrates is governed in the Constitution, as we have seen; however, the procedure is not clearly regulated with detail, lacks transparency and lacks citizen participation.⁹

Pursuant to Article 203 of the Constitution, the alternates of the justices of the Supreme Court of Justice must be elected in the same manner as the principal justices, but only from the list of judicial civil service members. The Magistrates of the Superior Courts are appointed by the Supreme Court of Justice and the Circuit or Municipal Judges by their hierarchical superior.¹⁰

b) Actual implementation of the judicial civil service since 2015.

After many recommendations issued by different organizations¹¹, in 2015 the law regulating the judicial civil service in Panama was published.¹² However, according to a former Supreme Court magistrate, the judicial civil service designed through this law is still not adequately implemented in Panama. Part of the problem lies in the undue

influence of the executive in the appointments of high court magistrates and in the approval of the budget.¹³

The transfer or promotion procedure consists of filling the first vacancy at the national level with the magistrates or judges of the same category who are



interested and, failing that, the judicial servant who occupies the first place in the position immediately below in the judicial ladder shall be promoted, provided that he/she meets the requirements demanded by law to hold the higher position.¹⁴ Magistrates and Judges may only make use of the right of transfer once in each category.¹⁵

Members of the Judicial Branch receive training that qualifies them to occupy senior positions that facilitate a coordinated and timely succession of positions when a vacancy arises that must be filled through promotion.

The Judicial Branch conducts an annual general review of all existing positions in order to recommend adjustments and modifications as required, according to the needs of the Institution and evaluation of the judicial service.

The Performance Evaluation System is applicable to those who render services in the Judicial Branch, including substitutes, with the purpose of periodically verifying compliance with previously defined performance criteria.¹⁶

2. Concentration of financial, administrative and judicial powers.

The Administrative Secretariat *Secretaría Administrativa* of the Supreme Court of Justice is in charge of the following directorates and/or departments: Directorate of Internal Auditing, Directorate of Information Technology, Directorate of the Judicial School, Office for the Prevention of Conduct Contrary to Judicial Ethics, directorates, departments, sections and units attached to the administrative secretariat and the units established by law and regulations.

The Supreme Court of Justice and the Attorney General of the Nation formulate the budgets of the

Judicial Branch and the Public Prosecutor's Office, respectively, and submit them to the Executive Branch for inclusion in the draft General State Budget, which must be approved annually by the Legislative Branch. No budget is assigned to each court. In general terms, the Administrative Secretariat plans, organizes and coordinates administrative activities for the proper functioning of the various departments of the Judicial Branch.

This shows a concentration of jurisdictional and other functions in the Court, and this affects the development of the functions of the judiciary.

3. Security of judicial operators

The *Dirección de Seguridad del Órgano Judicial*, attached to the Plenary of the Supreme Court of Justice, under the coordination of the Fourth Chamber of General Business, is in charge of regulating the security of the institution; its main function is to establish strategic policies, programs, norms, general procedures and to carry out a comprehensive study and a security plan for the Judicial Branch.

The priority of safeguarding the physical integrity of the people who are inside the judicial facilities, implementing safety standards and devices to prevent accidents at work and damage to equipment and facilities, making known to all employees of the Judicial Branch, security measures, essential to prevent, neutralize and counteract any security risk that could threaten the tranquility and development of the functions of this institution. Instruct the staff member to be able to react to the unexpected or situations caused by external agents such as human



force or nature itself, which could cause physical or material damage, as well as the need to make the staff member aware of the importance of applying all security measures, tending to minimize any risk.

The Judicial Civil Service Law establishes that, in order to guarantee judicial independence, magistrates and judges are irremovable.¹⁷ Consequently, they may not be subject to dismissal, suspension or transfer, except in the cases and with the formalities provided by the Constitution, the law, the rules that develop it and, in particular, those contained in the Performance Evaluation System, for cases in which these are applicable.

The procedure for the removal of immunity is as follows: The Board of Directors of the *Asamblea*

Nacional shall immediately appoint a Commission to be formed in accordance with the criteria set forth in the *Estatuto General de la Asamblea Nacional*, in order to study and rule on the complaint filed. The official against whom the complaint was filed shall be notified of the terms of the complaint within 24 hours after the Commission has been formed, and shall be given a hearing before the Commission within the sixth day of notification so that he may express his views.

a) Harassment of judicial operators through complaints

No recent cases of persecution and intimidation of members of the judiciary through the improper use of disciplinary, administrative or judicial processes have been reported.

4. Corruption in the judicial system

In March 2020, during a police operation, 130 kilos of cocaine were seized and Christian Cedalise, son of magistrate Cecilio Cedalise, was arrested for illegal possession of weapons and drug trafficking. Subsequently, the plenary of the Supreme Court of Justice admitted an injunction to protect the magistrate's son from the precautionary measures taken by a judge of the Republic.¹⁸ This type of decision generates distrust in the citizenry regarding the independence of the judiciary and impartiality in the face of individual interests. Judge Cedalise has already been questioned for his reports such as the one related to the wiretapping of former President Martinelli.¹⁹ On this same matter, another case was processed before a Trial Court, which declared the innocence of the former president, which unleashed strong criticism at a national and international level due to the seriousness of the acts committed in violation of human rights.²⁰

There are multiple cases of corruption of judges and magistrates that have come to light and are under investigation, including cases of bribery by lawyers²¹

and cases of judicial delinquency associated with corruption of judicial officials.²²

The US State Department has stated that Presidents Ricardo Martinelli and Juan Carlos Varela, both under investigation for multiple crimes, had undue interference in judicial matters. The former presidents are on a list of the Anti-Corruption Prosecutor's Office to be called to trial for bribes given by the construction company Odebrecht.²³ In general, citizens and organizations observe that there are no convictions for major corruption cases in the country.²⁴ Most cases are dismissed due to procedural errors or lack of evidence.²⁵ Likewise, there are multiple cases of human rights violations such as sexual abuse of minors in shelters in which justice does not seem to act.²⁶ The Inter-American Commission on Human Rights has pointed out that a biased justice system is precisely a corrupt system.²⁷

According to the 2019 competitiveness index, made by the *World Economic Forum*, out of 141 States, Panama is 129th in terms of judicial independence. According to Carlos Barsallo, Director of the Panama



chapter of Transparency International, the only way to get the judiciary in Panama to investigate and prosecute irregular actions of other public authorities is through changes of government. This indicates that the judiciary does not really exercise its functions independently.²⁸

According to the Corruption Perceptions Index published by the organization Transparency International, Panama obtained a lower score in the most recent publication of the ranking. The organization explained that the lack of judicial independence in the region was one of the points highlighted in the analysis of this index.²⁹

5. Undue interference

There are no reports showing undue interference by other public authorities in the administration of justice in Panama. However, at the beginning of the year 2024, a visit of the Consejo de Seguridad

Pública y Defensa Nacional (attached to the Presidency) to the facilities of the Supreme Court of Justice was reported, which set off alarm bells in terms of judicial independence.³⁰

6. Support and recognition of independent judicial operators

Advances in gender equality are evident. María Eugenia López Arias was elected President of the

Supreme Court of Justice, the fourth woman to hold this position.³¹



Endnotes

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² Constitution of the Republic of Panama, Article 203.

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¹⁴ Article 94, Law 53 of August 27, 2015.

¹⁵ Article 93, Law 53 of August 27, 2015.

¹⁶ Article 140, Law 53 of August 27, 2015.

¹⁷ Article 106, Law 53 of August 27, 2015.

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