

Ecuador

Widespread corruption and heavy back log constitute the main problems the Ecuadorian judiciary has to face, against a background of continuing political and economic instability. The judiciary also experienced economic hardship and renewed attempts against its independence.

The Republic of Ecuador is a constitutional democracy. The 1998 Constitution establishes the separation of powers among the three different branches of government. The executive power is exercised by the President of the Republic who holds office for a five-year term. Mr. Jamil Mahuad, elected in 1998, continued in office during 1999 but was overthrown in January 2000. In recent times no elected president has concluded his mandate. Legislative power is vested in a unicameral legislature comprising 121 deputies. The Constitution provides for an independent judiciary, although political influence is apparent and corruption is widespread.

Economic and financial instability constitute the framework in which political and institutional instability developed. The national currency was devalued many times during the year and governmental finances collapsed due to the effects of the 1998 natural disaster and the burden of debt repayment. Economic stabilisation programmes, implemented by the government, generated massive social protest led by the Workers Unitary Front (FUT) and the Confederation of Indigenous Nationalities of Ecuador.

In March 1999, following massive protest and social unrest, President Mahuad declared a state of emergency in the country and set up a fresh package of economic measures that triggered even more social unrest. After a reshuffling of the ruling coalition, some of the measures were withdrawn, including a partial repeal of the state of emergency. In the context of the negotiation of a loan with the International Monetary Fund (IMF), the government announced an austerity plan that triggered more public protest and a wave of strikes nationwide. President Mahuad declared the state of emergency again, but suspended it some weeks later.

In September 1999, Mr. Mahuad carried out a new reshuffling of his cabinet. As the financial and economic turmoil continued, he had to declare a moratorium on the repayment of the country's external debt in October 1999, becoming the first country to formally default Brady bonds. He also announced that Ecuador would default its debt on eurobonds.

In November 1999, trade unions, grassroots and student organisations escalated their campaign against the austerity plans, the new annual budget for 2000 negotiated by the government with IMF support and demanded the resignation of Mr. Mahuad as President.

In January 2000 President Mahuad announced the adoption of the dollar as the national currency, as a way to stabilise the financial situation of the country. In response, the Confederation of Indian Nationalities of Ecuador organised a series of national and regional manifestations demanding Mr. Mahuad's resignation and the closing of parliament and the Supreme Court. The indigenous movement managed, with the support of the army, to occupy the premises of parliament and the Supreme Court, from which the army forced President Mahuad to resign. Vice-President Noboa temporarily occupied the presidency until parliament, which was specially convened, formally dismissed Mr. Mahuad on charges of abandoning his post, and Mr. Noboa was sworn in as president on 26 January. Mr. Mahuad has always denied that he abandoned his post and claims there was a plot to overthrow him.

The new Ecuadorian President has vowed to continue the implementation of economic policies set up by his predecessor, especially the most criticised "dolarisation" of the economy. The leaders of the indigenous movement have threatened further protests in the future. By the end of January, criminal investigations were instigated against some army chiefs on charges of having supported the ousting of a constitutional government. Among the accused was General Paco Moncayo, a well-known officer during the war against Peru. Military courts also initiated proceedings against 12 lieutenants and 300 junior officers on charges of sedition and insubordination.

Human Rights Background

The state of emergency declared in the Guayas province from January 1999 to July 1999, and then again in December 1999, was the framework for the practice of unlawful detentions carried out by the police. Hundreds were arrested, sometimes on mere suspicion or for not carrying an identification document. The state of emergency was purportedly declared to help the authorities to deal with the growing common criminality in the province.

A further state of emergency was declared in the whole country by President Mahuad in March and July 1999 due to the social and political unrest. According to legal provisions states of emergency can last only for 60 days, but may be extended if need be. In this context, wide restrictions on freedom of movement and assembly, as well as personal liberty and integrity, were imposed by the authorities. The police carried out arrests and held people in detention whose actions, in many instances, had no connection with the state of emergency.

The Constitution and the law prohibit, under normal circumstances, the detention of a person without a judicial order, and allow the arrested person to challenge the lawfulness of his or her detention. However, the police do not always respect these provisions and in many instances relatives of those arbitrarily detained have to resort to bribing the police in order to get the victims released.

There were instances of extra-judicial killing by the police or civil patrols, though none were politically motivated. A number of the killings occurred when the police used excessive force to repress social protesters in the street, but many others were victims of lynching by mobs. Torture and other kinds of mistreatment were frequently used against suspected or detained persons in police custody. Prisons continued to be overcrowded, with 67.46 % of all inmates being held without a conviction (most of them are awaiting trial but others had already been tried). The 1998 Constitution provides for the immediate release of those persons accused of crimes punishable with a maximum of five years imprisonment but who have already spent one year in prison without a final sentence.

In February 1999, left-wing parliamentarian, Jaime Hurtado, was killed, together with two other people, by unknown persons. Mr. Hurtado was a lawyer but the evidence does not suggest that his murder was linked with his activities as a jurist. Instead, it seems to have been politically motivated. Parliament set up a commission of inquiry that issued a report some months later. The authorities investigated and charged three police officers but investigations continue.

In March 1999, former acting President, Fabian Alarcon, was arrested, pursuant to an order by the Supreme Court, on charges of illegally hiring personnel during his holding of the Speaker's office in parliament.

In what constitutes a positive step, the government of Ecuador settled amicably a number of cases before the Inter-American Commission and Court of Human Rights, respectively, during 1998 and 1999. Some of these cases involved killings and arbitrary arrest and torture. In all of these cases the government admitted fault and agreed to pay compensation to the victims or to their relatives.

Legal Reform

In December 1999, a law containing a new Code of Criminal Procedure was enacted and will enter into force during the year 2000. The law was partially vetoed by President Mahuad, but after parliament accepted the modifications, it was approved. The new code is meant to introduce substantial elements of the adversarial system of criminal justice into the existing outdated and mainly inquisitorial system. The code was adopted by way of implementation of the provisions of the 1998 Constitution.

The Judiciary

The Constitution provides for the independence of the judiciary. Judges and magistrates are only subject to the Constitution and the law (Article 199). In practice, however, the judiciary is subject to political and other influences, and its work is undermined by insufficient resources, corruption and poor training. A programme of judicial modernisation has been carried out in recent years and this has helped to improve and speed up certain proceedings. In July 1999, a mission from the World Bank visited the country and carried out an inspection of the work being done with regard to the infrastructure of the judiciary.

Structure

The judiciary (funcion judicial) comprises the Supreme Court, the highest ordinary judicial authority, a number of High Courts that have jurisdiction over judicial districts, and a system of lower courts. The National Council of the Judiciary (Consejo Nacional de la Judicatura), the administrative and disciplinary body, is also part of the judiciary. There is a Constitutional Court.

The National Council of the Judiciary was introduced in the 1998 Constitution. It is in charge of administrative and disciplinary matters (Article 206 of the Constitution). Law N° 68 of March 1998 sets out the basic features and establishes the powers of the Council. According to Article 2 of the law, the Council of the Judiciary is composed of seven members plus the President of the Supreme Court, who presides over it ex-officio. The seven members are appointed by the Supreme Court, meeting in plenary, and with the vote of two thirds of its membership, from lists submitted by the High Courts, the law schools and the Bar Associations. They serve for a renewable period of six years.

Until November 1999 the Council of the Judiciary had received at least 2,000 complaints against judges and court staff. One of the most outstanding, for its political connotations, prompted the institution of proceedings against criminal justice Isabel Segarra on charges of opening investigation into President Mahuad's alleged implication in an embezzlement case without following the constitutional rules on impeachment before parliament. Judge Segarra was dismissed by the Council of the Judiciary in November 1999. The high number of complaints highlights the strong lack of confidence in the judiciary.

Appointment and Security of Tenure

Article 202 of the Constitution provides that the justices of the Supreme Court will be appointed by the Supreme Court itself, with a majority vote of two thirds, and will enjoy life tenure. They should only be dismissed for reasons stated in the Constitution or by law. Article 204 recognises and guarantees judicial career. It also provides that the judges, other than Supreme Court judges, will be selected and appointed on the basis of public competition.

The members of the Constitutional Court are appointed by parliament from a list of candidates prepared by each of the branches of power and other corporate and social groups. They serve a renewable term of four years. After the constitutional reform of 1998 a new bench of judges for the Constitutional Court was due to be appointed. However, due to political instability the task was delayed and the period of the judges serving in the court at the time was extended. In 1999 parliament put an end to this transitional period, appointing the new members of the court.

The Council of the Judiciary is the body in charge of resource administration and discipline within the judiciary. According to Article 11(c) of Law 68, the Council has the power to decide on cases involving disciplinary sanctions, including separation and removal of judges of High Courts and lower courts. It has the same power with regard to the judiciary's personnel. Decisions of the Council on these matters can be appealed. It is worth noting that the Council does not have disciplinary powers over the judges of the Supreme Court.

In June 1999 a bill to amend Article 130.9 of the Constitution was introduced in parliament. The proposed bill grants the parliament the power to initiate impeachment proceedings against the justices of the Supreme Court and the counsellors of the Council of the Judiciary, as well as to dismiss them. The absence of a constitutional provision that subjects judges of the Supreme Court to the control of the legislature was underlined during the constitutional crisis originated by the Constitutional Court decision suspending Article 130.9 of the Constitution (see below). The proposed amendment will allow parliament to institute impeachment proceedings against the judges of the Supreme Court and the Council of the Judiciary for misconduct while on duty and one year after leaving office.

Constitutional Crisis and Appointment of Judges of the Constitutional Court

On 7 April 1999, the Constitutional Court passed a sentence suspending Article 130.9 of the Constitution which grants parliament the power to institute impeachment proceedings against the President of the Republic, ministers, the Human Rights Ombudsman and other high-ranking officials, but not against the justices of the Supreme Court, nor against members of the Council of the Judiciary. The Constitutional Court considered that the provision was discriminatory and should be suspended until it is amended. The decision, which came at a time when parliament was discussing an impeachment against the Human Rights Ombudsman, triggered strong reaction by parliament and was questioned by many observers as it declares invalid a constitutional provision, an action for which the Constitutional Court does not have competence.

The controversial decision of the Constitutional Court that questioned the powers of the legislature to hold politically accountable high-ranking public officials and members of other branches of government, prompted parliament to strike back, adopting a resolution that put an end to the extraordinary term that was being served by the members of the court. The judges

of the Constitutional Court were serving on a temporary basis until the new membership of the court was appointed by parliament pursuant to the 1998 Constitution.

The ensuing negotiations in parliament to appoint the new members of the Constitutional Court highlighted the strong influence of political considerations in the process, as each political party in parliament tried to get a "representative" into the new Constitutional Court. On 11 May 1999, six new members of the court were sworn into office. The group included former justice of the Inter-American Court of Human Rights, Justice Hernan Salgado Pesantes, and two members of the old court who were re-elected. On 16 June 1999, parliament appointed the other three members of the Constitutional Court.

Also in May 1999 the President of the Constitutional Court resigned in the midst of the Constitutional crisis and the ending of his term as judge in the court.

In November 1999, the Constitutional Court declared that the freezing of bank deposits in dollars, declared by the government, in March 1999, as an emergency measure to prevent the flight of capital from the country, was unlawful. The ruling was questioned as damaging the national economy.

Resources

The judiciary continued to be poorly funded and understaffed. In March 1999, members and staff of the Constitutional Court initiated a strike in protest against the failure of the Ministry of Finance to transfer the financial resources necessary for the court's functioning. They also protested against the reduction of the Constitutional Court's budget. Staff working in the office of the Ombudsman joined the strike.

In October 1999, staff of the judiciary began to strike in protest against the reduction of the judicial budget for the year 2000. In November 1999, they carried out another strike that lasted three weeks and brought the judiciary almost to a collapse. They warned that the judiciary would be forced to close by mid-2000 for lack of budgetary resources.

Military Courts

The extended jurisdiction of military and police tribunals over military and police officers who commit common crimes continues to be a factor that undermines the powers of the ordinary justice system. Conflicts of jurisdiction between military tribunals and civilian ones are settled in favour of the former. In a case involving an Ecuadorian citizen who was tortured with fatal consequences, the Constitutional Court considered that the police tribunal had jurisdiction to try the case since the accused policemen committed the crime while on duty. Police and military tribunals carry out closed trials and their decisions or sentences are not made public.

In October 1999, the National Council of the Judiciary forwarded to the Supreme Court a proposal of a bill to transfer jurisdiction to the ordinary justice system to trials of military and police officers for common offences. The bill tries to implement the Transitional Constitutional Provision N° 26 that provides that all magistrates and judges dependant on the executive branch, as is the case with the military and police, should join the ordinary justice system. The bill, if passed into law, will subject military and police officers to trials directly before the Supreme Court to avoid undue pressure upon the lower level judges.

Corruption and Undue Political Influence

On various different occasions during the year the existence of corruption in the judiciary was recognised. In January 1999, the former Procurator General declared that the composition of the judiciary shows a high degree of politicisation despite the functioning of the National Council of the Judiciary. In October 1999, following declarations by the Vice-President of the Republic to the press pointing to the existence of corruption in the judiciary, the President of the Supreme Court accepted the fact but said that it was extendible to the entire public administration.

During the year the Council of the Judiciary sanctioned a number of judges and court personnel for misconduct or corruption. In November 1999, the Council dismissed two judges and two court employees on the grounds that they had been involved in the illegal release of suspects of drug-trafficking. In November 1999, the President of the Guayas High Court resigned his post ostensibly due to the political pressure and rampant corruption in the local judiciary. He had just recently been cleared by the Council of the Judiciary of charges of exerting undue influence over a prosecutor.