

## Venezuela

**A new constitution was approved by plebiscite at the end of the year. A radical restructuring of the judiciary, following serious denunciations of corruption and inefficiency, provided the backdrop for attacks on its independence and the suspension or dismissal of at least 229 judges in the country.**

In December 1998, Mr. Hugo Chavez won the presidential election, taking office as President of the Republic at the beginning of 1999. In his campaign Chavez had severely criticised the existing parliament and the judiciary for their corruption and inefficacy in facing the acute national problems. He promised a new constitution. In March 1999, President Chavez called for a referendum to have his plan for the election of a Constituent Assembly to draft a new constitution approved by the people. At the same time he publicly announced the legal powers that the new body would eventually have. The most controversial amongst them was the "full and original power" the Constituent Assembly would enjoy with regard to the existing political institutions and the judiciary. The proposal raised strong concern as it would place the new body above all other institutions and, at the same time, it would not be bound by the Constitution. In mid-March the Supreme Court ruled that the referendum on whether a Constituent Assembly would be elected or not was lawful but its powers should be limited only to the reform of the Constitution.

On 25 April 1999, the referendum was carried out and a wide majority of 85% of voters, with a turnout of only 39.1% of all those legally entitled to vote, backed the plan of electing a Constituent Assembly. People were called to the polls to elect the members of the Assembly on 25 July, and President Chavez's Patriotic Front obtained 121 of the 128 seats (three others were reserved for representatives of indigenous peoples). The Constituent Assembly, which was to draft a new constitution within six months, convened in August and immediately declared itself as enjoying "original and full powers", meaning the assumption of legislative and disciplinary powers together with the power to redraft the 1961 Constitution.

Two resolutions adopted by the Assembly, one declaring a "legislative emergency" and another declaring a "judicial emergency" (see below) provoked a constitutional crisis that was partially solved through an agreement brokered by the Catholic Church on 6 September 1999. By virtue of this agreement the resolution declaring the "legislative emergency", which would have practically dissolved the parliament, was repealed and parliament was to resume its work, although with limited powers, until the new Constitution was approved and entered into force. The other resolution declaring the "judicial emergency" and appointing a special commission was maintained.

Under the insistence of President Chavez, the Constituent Assembly rushed to draft a new constitution that was put to the vote in a national referendum on 15 December 1999. Again, a sweeping majority approved the constitutional text.

### **The Judiciary and the Decrees of Judicial Emergency**

The National Constituent Assembly started its work in August 1999 in the midst of high expectations, and repeatedly denounced corruption and attacks on other institutions. A draft resolution to intervene directly in the judiciary and declare an emergency was presented immediately and debated during two weeks. The Supreme Court reacted to the proposal by convening a plenary session where, by 8 votes to 6, it decided, under pressure, to support the

Constituent Assembly's initiative. Chief Justice Cecilia Sosa Gómez resigned on the same day (23 August 1999).

Once all opposition from the Supreme Court was overcome, the Constituent Assembly passed a decree re-organising the judiciary (25 August 1999) whereby it declared that:\* The judiciary was in a state of emergency and a special Commission on the Judicial Emergency (CJE) was to be appointed to carry out a programme of reform (Articles 1 and 2).

\* Among the powers of this commission are the following: To elaborate the budget for the emergency reform, to give instructions to the Council of the Judiciary and to prepare a plan for the evaluation and selection of judges (Article 3).

\* Article 4 provided that the CJE would immediately, within 20 days, evaluate the work of the Supreme Court, the Council of the Judiciary and other judicial institutions.

\* The Council of the Judiciary and the Inspector-General of the Judiciary were placed under the direct jurisdiction and orders of the CJE. It was also provided that the CJE would propose to the Constituent Assembly the dismissal of those members of the Council or the Inspector-General who did not follow its instructions (Article 5).

\* Article 6 provides that: "The Commission on Judicial Emergency will decide the immediate suspension, without salary benefits, of all judges, attorneys, and other officers of the Council of the Judiciary, the judicial districts and tribunals, who are facing judicial proceedings for corruption. The decision will be immediately enforced by the Council of the Judiciary in accordance with the instructions given by the Commission on Judicial Emergency".

\* Article 7 grants the CJE the power to order the Council of the Judiciary to immediately dismiss a judge involved in serious procedural delays or when the judge's judgements have been often overturned.

\* By Article 9 the Constituent Assembly declared itself as the only instance for appeals regarding suspensions or dismissals of judges. The appeal should be made within five days.

\* Under Article 10 the Constituent Assembly assumed the power of governing body in the judiciary with the responsibility to organise the selection of judges and to fill the posts left vacant by the process of "re-organisation".

This decree, which is inconsistent with the international obligations assumed by Venezuela, deprives the legitimate institutions of their powers, concentrates all powers in one single institution that has placed itself over all others and even above the Constitution, and violates the individual rights of judges and prosecutors to due process, a number of whom have been suspended or dismissed. The decree subjects the appointment, security of tenure and judicial career of judges and prosecutors to a political body that should normally limit itself to the drafting of a constitution, depriving the legitimate body, the Council of the Judiciary, of these powers. According to some observers the declared objectives of the measure, the need for urgent reforms to combat corruption and inefficiency, are unlikely to be achieved by these means which imply the breach of the Rule of Law and the practical elimination of safeguards for the independence of the judiciary.

The conduct of the CJE during the rest of the year confirms this assertion. Reports say that the CJE made decisions to suspend or dismiss judges without due respect for the right of defence or other guarantees of the due process of law. On 13 September 1999, Ms. Normarina Tuozzo, Chairperson of the Council of the Judiciary, resigned from her post in protest against the curtailing of the Council's powers and decisions being taken by the CJE without hearing the Council's opinion.

Many judges - around 230 by the end of the year - were dismissed or suspended from their posts as a result of the application of the emergency decree, or after a summary and flawed procedure was carried out before the CJE. Human rights organisations expressed concern over the fact that decisions were taken on the basis of the judges' political allegiance. Frequent and direct interventions by members of the Constituent Assembly in decisions on whether or not a judge should be dismissed were also reported. Further interference was also reported, even on juridical matters. For instance, two judges in an appeal court were dismissed for having adopted a decision that the President of the Constituent Assembly disliked.

Shortly after the resignation of the Chairperson of the Council of the Judiciary, the Chairperson of the CJE itself (Mr. Alirio Abreu) also decided to resign.

As to the procedure and criteria followed by the CJE to fill the vacant posts resulting from the dismissals and suspensions, Mr. Manuel Quijana, the new Chairman of the CJE, declared in October that consultations with academics and jurists were under way to choose the most competent candidates. The judges filling the vacant posts would serve on a temporary basis and be appointed without public competition as the law of the judicial career mandates (see Attacks on Justice 1998).

By the end of August 1999, a petition was filed before the Supreme Court to have the decree on the re-organisation of the judiciary declared unconstitutional and abrogated. The petition was supported by the political opposition and some human rights organisations. In October the Supreme Court dismissed the petition.

### **The New Constitution**

The new Constitution, drafted by the Constituent Assembly and ratified by the people in a referendum held on 15 December 1999, contains provisions concerning rights and guarantees of due process of law, as well as provisions relating to access to courts that did not exist in the former Constitution. The text of the new Constitution guarantees free, accessible, impartial, competent, transparent, autonomous and independent justice (Article 26), and provides that human rights violations and crimes against humanity shall be investigated and tried in ordinary courts and cannot be the subject of pardon or amnesty (Article 29). Further, the guarantees of due process of law, such as presumption of innocence, rights of the defence and the right to be tried by an ordinary tribunal, are all spelt out in detail (Article 49). The same provision prohibits the institution of faceless judges. Controversially, it includes as a part of the due process the right to reparation for miscarriages of justice, opening even the possibility of holding judges personally and criminally responsible for miscarriages of justice (Article 49.8 and Article 255).

With regard to the division of powers the new Constitution extends even further the already large powers of the President of the Republic, giving him the power to appoint and dismiss

his Vice-President and ministers at will, as well as to decide on the promotion of military officers over the rank of colonel (Article 236).

The Constitution provides for a broad definition of the justice system. This is composed of the Supreme Tribunal of Justice (Tribunal Supremo de Justicia) and other tribunals to be determined by law, the Public Prosecutor's Office, the Defender-General (Defensoría Pública), criminal investigation bodies, assistants, the prison system, the alternative means of justice, citizens participating in imparting justice and practising lawyers (Article 253).

Article 255 establishes that the appointment or promotion of judges shall be made through public competitions in which circuit juries will make the selection. Formerly, the selection and appointment of judges was the responsibility of an independent Council of the Judiciary, an institution that does not exist under the new Constitution. The actual appointment of judges is to be carried out by the Supreme Tribunal but this function is symbolic and limited to rubber-stamping decisions that have already been made. Article 258 provides for the popular election of Justices of the Peace in the communities.

By Article 256 judges, prosecutors and public attorneys are prohibited from carrying out any other activity, except teaching, with the aim of preserving their impartiality and independence. Further, judges are forbidden from forming associations.

### *The Supreme Tribunal*

The Supreme Tribunal is to replace the Supreme Court. Apart from the change of name the new Constitution contains far-reaching and controversial provisions with regard to the powers and organisation of this highest tribunal. A new Chamber of Constitutional matters was created with the power of, inter alia, declaring invalid federal or state laws on the grounds of unconstitutionality, and deciding over conflicts of competence between the constitutional branches (Article 336).

Article 264 establishes a general procedure for the selection and appointment of justices of the Supreme Tribunal leaving the details to be developed by law. It sets out a three-stage process whereby candidates apply first to a Committee of Applications that makes a preliminary selection and passes it on to a newly-created body called the Citizen Power (the National Ombudsman, the Prosecutor-General and the Comptroller-General acting together as a Republican Moral Council, Article 273) which makes a second preliminary selection. Finally, the National Assembly (the legislative power) makes a third and definitive selection. The same provision allows citizens to challenge or object to the candidates at any stage of the process.

Justices of the Supreme Tribunal are appointed to serve for a non-renewable period of 12 years and can be removed or dismissed by the National Assembly with the vote of two thirds of its membership, and only in cases of serious misconduct previously qualified as such by the Citizen Power. The new Constitution also contains some transitory provisions, among which there are some that directly concern the future organisation and independence of the judiciary. The fourth transitory provision mandates that the new national assembly, to be elected following the provisions of the new Constitution, shall discuss and pass all legislation related to the judicial system during the first year of its work. The ninth transitory provision grants the Constituent Assembly the power to appoint the National Ombudsman.

The constitutional provisions on selection and appointment of judges for the Supreme Tribunal may leave room for political considerations and interests in the process and do not seem to comply with the international standards guaranteeing independence and impartiality of the judiciary. Later developments in the appointment of judges and other magistrates have confirmed this fear. In effect, after the Constitution was approved in referendum in December 1999, and during the holidays at the end of the year the Constitutional Assembly appointed, allegedly on a temporary basis, the members of the new Supreme Tribunal, the Prosecutor-General, the Comptroller-General and the Ombudsman. It also appointed a "temporary congress" to perform the legislative tasks in the transition period to the full implementation of the provisions of the new Constitution. The appointments were made without following the process set out in the new Constitution itself.

### **The Process of Judicial and Legal Reform**

The process of legal and judicial reforms, initiated some years ago, continued with the entry into force of important laws such as the new Code of Criminal Procedure (Código Orgánico de Procedimiento Penal - COPP) in July 1999. This law followed two other important laws which had already entered into force at the beginning of the year: the Law of the Judicial Career and the Law of the Council of the Judiciary. However, the future of the process looks uncertain since new legislation needs to be passed to implement the provisions of the new Constitution and many of the positive and innovative institutions in these laws, such as the Council of the Judiciary, were eliminated by it. A new stage in the reform process is starting in the midst of uncertainty.

The implementation of the COPP was preceded by a preparation stage in terms of training and dissemination of the new code among judges, prosecutors and auxiliaries (see Attacks on Justice 1998). However, the implementation faced strong resistance, especially from the Prosecutor's Office and some auxiliary bodies. The pre-implementation stage has also meant an increase in the number of judges and tribunals, although many of the posts are still vacant and the appointment procedure is yet to be developed by a new law in accordance with the new Constitution.

The Law of the Council of the Judiciary, which entered into force in January, increased the number of counsellors in this body from five to eight: four to be appointed by the former Supreme Court, two by the executive branch and two by parliament. However, only the Supreme Court complied with the established deadline. The delay incurred by the other two institutions to appoint the other four counsellors has caused further delays in the work of the justice system. Later, when the Chairperson of the Council resigned (see above) she was replaced by a person appointed by the Supreme Court. As a whole the role and even the existence of this body is under question since the new Constitution assigns the powers that formerly belonged to it to other bodies. It seems that the Council will continue to function until a new law laying down the rules for selection, appointment and training of judges and prosecutors is enacted. The position of the Public Prosecutor has also been the target of undue intervention by the executive and the Constituent Assembly. Following the existing legal provisions parliament appointed a new Prosecutor-General in April 1999. The person elected by parliament did not please President Chavez who harshly criticised the appointment. By the end of the year, the Constituent Assembly appointed a new temporary Prosecutor-General.

### **Reform of the Military Justice System**

The system of military justice constituted the only court system that remained untouched by the criticisms of corruption, inefficiency and slowness launched against the rest of the ordinary judicial system. It was also left outside the radical reorganisation programme implemented during the year by the Constituent Assembly. However, the military justice system continues to be the focus of criticism from human rights organisations and institutions for its continuing extended jurisdiction over civilians, in certain cases, and over all cases involving an active military officer.

The new Military Code of Justice contains several provisions that are inconsistent with international norms on due process and enhance impunity for military officers who commit human rights abuses. In this regard, some controversial provisions of the old code have not been abrogated but, instead, were reproduced or even widened. For instance, Article 54 of the old code grants wide powers to the President of the Republic to intervene in criminal proceedings before the military tribunals. The President can order criminal proceedings to start or can stop them in the "interest of the Nation". The new code has further extended this power to stop proceedings at any stage.

The powers traditionally enjoyed by the military justice system, which are enshrined in the law amending the Military Code of Justice that entered into force in July 1999, are now in question since they collide with explicit prohibitions in the new Constitution. Article 29 of the constitutional text provides that human rights violations and crimes against humanity shall be investigated and tried in ordinary tribunals.

The critics of the amended Military Code of Justice underlined the fact that no part of this law develops the guarantees and principles of a due process of law, amongst them the independence of judges and prosecutors and the rights of the accused, leaving the impression that the system of military justice should not abide by these principles. Likewise, the provision of a military Prosecutor-General (Article 70) has been questioned as it collides with the principle of unity of the Prosecutor's function.

### **The Inter-American System and Legal Developments**

President Hugo Chavez visited the headquarters of the Inter-American Commission on Human Rights, in Washington, on 22 September 1999. This was the first time ever that a President of any country had visited the Commission at its own headquarters. During the meeting, President Chavez invited the Commission to carry out an in situ visit to Venezuela with the aim of becoming more closely acquainted with the events there. The invitation was accepted and the visit will probably take place during the year 2000.

#### **Cases:**

**Cecilia Sosa Gómez** (Chief Justice of the Supreme Court): She resigned her post on 23 August 1999 after the plenary of the Supreme Court decided to back the Constituent Assembly's initiative to declare an emergency and re-organise the judiciary.

**Normarina Tuozzo** (Chairperson of the Council of the Judiciary): Ms. Tuozzo resigned her post on 13 September 1999 as a protest against the curtailing of the Council's powers by the action of the Constituent Assembly and the Commission on Judicial Emergency.

A first group of judges were suspended by the Inspector-General of Tribunals following instructions from the Commission on Judicial Emergency established pursuant to the Decree on Judicial Emergency of 25 August 1999. The judges, against whom there were serious complaints of corruption, were not afforded due process since they were suspended by a body established on an exceptional legal basis and through procedures which were established ad hoc.

97 judges were suspended from their posts, allegedly for the accumulation of 7 or more complaints against them, in October 1999. They are the following:

Aida Alvarez Alvarez Gisela Aranda Hermida Evelinda Arraiz Hernandez Pedro Bello Castillo Alfredo Bolivar Perez Zuly Julieta Boscan Rincon Pedro Botero Baslice Joel Braschi Santos Saul Bravo Romero Carmen Teresa Brea Escobar Francisco Cabrera Bastardo Alexis Cabrera Espinoza Felix Cardenas Omaña Pedro Cardenas Zamudio Haydee Carrizales Miguel Angel Caseres Gonzales Lilia Castillo Rodriguez Manuel Castro Rausseo Hugo Contreras Suarez Grecia Coronado de Tovar Militza Curiel Hernandez Nemesio Diaz Montaner Cesar Dominguez Agostini Arnoldo Echegaray Maritza Espinoza Baptista Maria Estaba Gonzales Manuel Estrada Toro Alexis Febres Chacoa Olga Teresa Fortoul de Grau Nelson Francia Victor Galindez Yarza Elsa Gomez Walder Virginia Gonzales Cisneros Horacio Gonzales Hernandez Gloria Gonzales Montero Maria Gonzales Rodriguez Luis Angel Gramcko Isnelda Gravina Alvarado Carlos Rafael Guia Parra Ismael Gutierrez Ruiz Enrique Hernandez Ibarra Vilma Hulet Story Rafael Inciarte Bracho Maritza Lopez Conde Loida Marcano de Diaz Juan Carlos Marin Fernandez Tomas A. Mariño Chacon Luis Rafael Matute Romero Adela Medina de Gonzales Simon Mejias Morachini Amilcar Merono Garcia Fanni Millan Boada Luis Moncada Izquierdo Ana Morales Langer Iris Morante Hernandez Hugo Moreno Perez Zoraida Mouldos Morffe Mary Moya de Padilla Rafael Jesus Mujica Luis Antonio Nahim Pacha Maria Oporto de Manrique Luis Oronoz Bordonez Maria Otaiza Ana Paredes Marquina Carmen Penachio Francisco Peña Barrios Jose Antonio Peñaranda Pedro Perez Alzurut Nancy Perez Bistochette Radegungis Perez Zambrano Carmen Poletti Aguirre Tito Abel Ramirez Cristobal Ramirez Sinsun León Ramirez Jaime Reis D'Abreu Gonzalo Rincon Perez Gonzalo Riskey Amengual Maria Celeste Rivas Diaz Thays Rivera Colombani Jose Rodriguez Avilan Mary Rodriguez Herrera Ligia Rodriguez de Peña Oscar Romero Azevedo Francisco Russo Elizabeth Salas Duarte Ana Yajaira Salazar Alberto Serrano Pirela Rafael Solorzano Escalante Olimpia Suarez de Algarra Aura Suarez de Contreras Raquel Subero de Quiñones Nadeska Torrealba Flor Maria Tortolero de Salazar Raul Valbuena Quevedo Carmen Teresa Vargas Cedeño Angel Albino Vasquez Madera Luis Alberto Villasmil Soraima Vivas Macero

A second group of 63 judges was suspended by the Inspector-General under the same circumstances, without respect for the due process of law and on the instructions of the Commission on Judicial Emergency, in November 1999.

Seventeen were suspended due to the gravity of complaints against them:

Lubin Aguirre Antonio Andreani Pieretti Marjorie Bello Luis Beltran Sanchez Gimmi Bittar Maddelli Ivan Escalona Roberto Gonzales Luque Edison Lozano Pedro Marcano Urriola Clodulfo Marquez Carmen Perez Edoardo Petricone Mercedes Ponce Delgado Antonio Reyes Sanchez Deyanira Russian Maria Simonovis Jorge Villamizar

The following forty-seven judges were also suspended for serious procedural delays, in November 1999:

Nelida Acosta de Rincon Hector Albarran Brady Aranbulo Torres Laudelino Aranguren Auxiliadora Arias Juan Floriano Balza Ismael Barreda Eglee Barrios Omar Belandria Vera Haydee Borges Luis Jose Camaripano Elzy Canizales Vilma Chaparro Ana Colmenares Jose Ramon D'Alessandro Belkis Alda Garcia Leopoldo Gonzales Francisco Gutierrez Miguel Guzman Morelia Hernandez Francisco Lamus Moraima Look Roomer Pedro Maldonado Margarita Marin Rosa Martinez de Pohl Luisa Maria de Martinez Jesus Mata Cacharuco Josefina Melendez Teresa Mendez de Quintero Danilo Mojica Monsalvo Virginia de Montesinos Sonia Motta Navarro Neyla Negron Rosario Nouel Pedro Jose Ochoa Mario Popoli Diomedes Potentini René Ramirez Contreras Freya Rodriguez Pedro Jose Rodriguez Sonia Rosales Teresa Santana Ana Teresa Solorzano Olimpia Suarez Jose Manuel Sue Machado Fernando Torres Angel Vasquez Madera

A third group of 67 jurists, including some lawyers who work at the legal aid office, was suspended by the Commission of Judicial Emergency itself, allegedly due to the gravity of the complaints against them, on 13 December 1999:

Rafael Albahaca Angel Altuve Maria Arias Juan Balza Amalia Blanco Nancy Blanco Jose Briceño Monzon Jose Cabrices Nancy Campos Silva Tomas Castillo Nelson Chacon Q. Luis Contreras Salvio Contreras Francisca Daboin Argenis Delgado Tania Delgado Leonardo D'Onofrio Beatriz Frigueredo Carmen Garcia Felix Gomez Fermin Elena Guanchez Angel Jurado Hernan Landinez Raiza Lares Illany de Lima Aida Leon de Obadia Josefa Mago Osman Maldonado Jose Gregorio Marrero Humberto Mendoza de Paola Danilo Mojica Martina Molina Victor Mora Contreras Eliseo Moreno Maria Rosario Paolini de Pal Indira Paris Maria Parra Elis Pereira Genaro Pereira Carlos Andres Perez Aristides Perez Ovallos lawyer Frann Petit Mercedes Ponce Delgado Rolando Quintana Ballester Idencio Ramirez Hilarion Riera Pedro Rivas Tirsia Rivero Carmen Elena Rodriguez Aura Rojas Juana Romero Venezuela Rondon Benito Salas Freddy Sanchez Maria Silveira Luis Teneud Miriam Torres Pacheco Ilse Tosta Pedro Troconis Wenceslao Uzcategui Dionis Velasquez Carlos Velez Jose Venero Ligia Venero Carlos Vizcarrondo Salvio Yanez Vicente Zevola