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Guatemalan Court's Decision Leaves Ex-president Exposed

by LADB Staff

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Guatemala's Corte de Constitucionalidad (CC), its highest court, handed down a decision Feb. 17 that effectively strips ex-President Alfonso Portillo (2000-2004) and his vice president, Francisco Reyes, of immunity from prosecution. The decision suspended, provisionally, articles of the Tratado Constitutivo del Parlamento Centroamericano that give automatic membership in the Central American Parliament (Parlacen) to former presidents and vice presidents. With that membership comes immunity from prosecution for a host of crimes including those allegedly committed while the subjects were in office.

Immunity fell from the two with the publication of the decision in the *Diario de Guatemala*, the official organ, on Feb. 18. The decision follows efforts by former presidents of the Corte Suprema de Justicia (CSJ) Oscar Armando Barrios and Ricardo Sagastume Vidaurre, and two lawyers, Ricardo Sagastume Morales and Donaldo Garcia Pelaez, to bring the case to court. The Sagastumes are, respectively, father and son.

One of the bases of the decision was a motion presented to the CSJ by Guatemalan Parlacen Deputy Alfredo Skinner Klee regarding deputies who are not popularly elected. Skinner Klee based his motion on Article 14 of the *Ley de Antijudicios*, which says, "All human beings are free and equal in dignity and rights." His argument was that he was required to be elected to his seat, while Portillo and Reyes were not, hence, a breach of Article 14 to his personal detriment. Skinner Klee termed the courtroom validation of his view a "true victory" because the only immunities left in Guatemala are those conferred by the country's own Constitution. Both he and Sagastume Vidaurre pointed out that the decision did not specify any names and that its main purpose was to "gain respect for the Constitution." A step remains, however.

The CC still must confirm, and make permanent, its provisional finding. But for the moment, it does not just mean lifting immunity; it also means that Portillo and Reyes are no longer Parlacen deputies. Oscar Barrios said that the juridical thinking went beyond Article 4. "The fundamental basis is Article 184 of the Constitution, which says, 'The president and vice president of the Republic will be elected by the people for a nonextendable period of four years, through universal and secret suffrage,' and Article 187, second paragraph, which says, 'The re-election or the prolongation of the presidential period by whatever means is punishable in conformance with the law. The mandate attempted to be exercised shall be nullified.' Since they go to Parlacen as ex-president and ex-vice president, they are prolonging their period," explained the jurist.

Portillo puts privilege to work

Portillo, scarcely a month into his ex-presidency, has already tried to invoke immunity and has failed to show up for a hearing. That incident, said Barrios, brought Article 130 into play in the legal thinking. That article says, "Privileges and monopolies are prohibited," and immunity is a privilege

in Barrios' book. Standing newly naked before the law, Portillo has reason to feel a draft. At least eight indictments against him have been moldering in the Congress.

CSJ Judge Carlos Larios Ochaita said, "Those indictments, there they are, nobody has moved them, and the situation is that, if nobody moves them, they will lie there in eternum." He said it would be up to interested parties to reactivate the cases, since for the CSJ to do so would be to stray from impartiality, but the cases should return to the court, because it, rather than the legislature, is the proper venue now that Portillo is no longer president.

The cases against Portillo include:

Defamation and calumny, brought by newspaper publisher Jose Ruben Zamora;

Use of state funds for his political party, the Frente Republicano Guatemalteco (FRG); * Instigating political violence during the Black Thursday disturbances in the last election (see NotiCen, 2003-07-17);

Failure to pay campaign debts, brought by creditors. Another 14 cases for which Portillo will have to defend himself in ordinary court will focus on his use of the presidential airplane, hidden bank accounts in Panama and allegations of malfeasance surrounding them, and others. The Panama case could see the former head of state answering money-laundering charges in Miami, as well. There is also a list of charges against Reyes, alleging corruption in connection with government construction contracts. These and related charges could bring down other former officials. Investigators have already begun to look into a number of government entities, programs, and ministries. Popular support for a sullied court The lead editorial in Guatemala's largest daily Prensa Libre applauded the CC decision as "an important step in the process of giving Guatemalan institutions the chance to function." The paper agreed with the legal basis of the finding and said, "The decision of the CC demonstrates that the institution seems to have entered into a phase of trying to recover lost prestige (see NotiCen, 2003-07-17), for which there can be no doubt that the sentence will very soon become definitive. Nor can it be forgotten that immunity for Parlacen deputies is no longer in effect, and that is a positive action for that organization because it eliminates one of the sources of justified criticism (see NotiCen, 2004-07-08)." The editorial ended on a hopeful note for the country that has seen its desire for a functioning judiciary so frequently betrayed: "The CC is helping restore propriety in the exercise of government by eliminating impunity. The certainty of there being no punishment for outrages has become an incentive to commit them, and therefore what the highest constitutional tribunal has decided has an importance that goes beyond punishing someone. It attempts to re-establish the principle that the legal structure reaches all citizens."

-- End --