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Immunity Curtailed in Honduras

by LADB Staff

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In an "unprecedented" act, the Congreso Nacional (CN) of Honduras has removed the constitutional immunity that for 46 years has shielded as many as 20,000 public officials from legal responsibility for their acts.

"The decision was adopted for the good of the country," said legislative president Porfirio Lobo. "Immunity was abused in the country, and, therefore, the time came to eliminate it." It must be emphasized that this immunity was not limited to acts committed in connection with the state or government. Under the constitutional provisions, hundreds of officials and politicians have walked free from acts not only of corruption, but also of rape, murder, manslaughter, domestic violence, family abandonment, and others. They were people for whom civil and penal codes were just books on a shelf. "We decided that we are all equal under the law," said Lobo.

The initiative became law by the vote of 90 of the 128 deputies of all five parties on a bill presented in 2003 by Partido Liberal (PL) Deputy Ramon Villeda Bermudez. It strikes Articles 200 and 205 from the 1982 Constitution, and it became permanent only after a vote in October 2003 and ratification by the 2004 legislature. Both votes were required to pass by an 86-vote supermajority (two-thirds) or better. It lacks only publication in the official gazette to become effective. That is expected sometime this month or next.

The stricken articles establish that state officials cannot be searched, detained, or judged by any authority, even under a state of siege. Immunity covers their persons, houses, and vehicles. Since 1957, the president, all three vice presidents, deputies, judges, secretaries of state and their assistants, mayors, councilmen and councilwomen, and military officers, all 4,000 of them, have enjoyed untouchable status. Other notables who will lose protection are the 20 deputies and 20 alternates of Parlacen, the Central American Parliament, famous as a hiding place for those who had lost immunity elsewhere through the electoral process or other calamity. Diplomatic chiefs of mission abroad will also lose the privilege.

Immunity entered political discourse in Honduras after President Ricardo Maduro announced his support for withdrawal from Parlacen (see NotiCen, 2004-01-08). As a strict legal matter, a covered individual can be stripped of immunity, but the process is so cumbersome that it has only happened twice in history. In both instances the officials were legislators, and both instances occurred since 2002. Already there has been rending and gnashing.

Minister of Public Works, Transport, and Housing Jorge Carranza is resisting an order to appear before the Fiscalía de Lucha contra la Corrupcion to answer to charges of awarding contracts without bids. Carranza claimed he has immunity until publication in the pages of La Gazeta. A triad of bureaucrats has reason to knit brow.

The president of the ethics committee of the Congress, Salvador Pineda, said, "We have three cases pending, they are ready to introduce on the floor, but upon ratification of the repeal of immunity there would be no object in submitting them because charges could be brought directly." Antejucio Perusal of history leaves no question that immunity provisions have been the refuge of scoundrels, but the legislators had to deal with fears that the loss of privilege would also prove to be a weapon in the hands of the unscrupulous. Immunity was extended to political candidates upon their approval by the Tribunal Supremo Electoral (TSE), because an indictment would make them ineligible to run.

Nominally to prevent that and other eventualities, legislators have taken up the idea of extending "antejuicio" to legislators and others. Antejucio falls short of immunity, but still affords judges and magistrates protection from prosecution by preventing its beneficiary from being suspended from the position that conveys the protection and obligating the Corte Suprema de Justicia (CSJ) to decide whether an indictment is appropriate (see NotiCen, 2004-02-05).

Deputies clamoring for antejucio threatened to delay or kill the immunity bill, prompting its sponsor, Deputy Villeda, to counterthreaten. "If next week the bill continues to be stonewalled, I will present initiatives to move it on, and if I don't get the echo in the Congress to carry on with the legal steps, I will do it by other public means, but I will not allow silence to hide the facts from the honorable citizen," said Villeda.

The PL deputy appears to have overcome resistance to immunity's demise with the threat. The PL is the major opposition party, and Villeda had the support of delegation chief Roberto Micheletti, who said on the floor, "We support the repeal [of immunity] and expect the directorate to present it at the earliest opportunity. As a delegation, we cannot but expect that the directorate will bring this repeal to the agenda." He added that the PL is ready "for all of us to be equal under the law."

But not exactly totally and completely ready, equal, or everybody

Micheletti also supported antejucio. He said it ought to be approved for officials and deputies because a little protection ought to be left to them, since "they could find themselves involved in unjust accusations. Next week if the bill is not presented, we will bring it to the floor." And that is how it came to be that the Congreso Nacional of Honduras, pioneer in the reform of constitutional inequality, undertook to reform the Codigo Procesal Penal to impose antejucio.

The reform changes six articles of the penal code to prevent legislators from being indicted without fairly complicated judicial action. Some deputies objected, noting that the process could easily be subverted and bottlenecks established whereby an accusation could lie dormant in perpetuity. For Union Democratica (UD) Deputy Cesar Ham, the matter was simple without immunity, all must be equal, and if a deputy is accused, the accusation should go before a judge, just as it would for any citizen.

But for antejucio advocate Deputy Rolando Dubon Bueso of the governing Partido Nacional (PN), "To leave in the hands of a common prosecutor the act of initiating a case before the judicial power without a higher authority determining if the case does or does not fulfill the requirements can be dangerous, because we live in an environment of suspicions, intrigues, and more in times of

elections, when it is easy to accuse someone and disqualify him." He went on to theorize that a judge of a lower court could be influenced and intimidated in a way that would not be the case if a magistrate of the CSJ had to act on it.

Dubon dismissed the notion that a case could get lost in the process. "It is anticipated that the process be as brief as possible, that is, [the reforms ensure that] in three days the court must resolve [the issue], in five more days the accused presents evidence for dismissal, and in five more days, the court will emit a resolution indicating if the trial will proceed or not." The UD faction was not impressed, indicating it would stand fast against a fraud against the people by which all that changes is words and chosen people remain insulated from the application of justice.

The court is ready Meanwhile, CSJ president Vilma Cecilia Morales said when the reforms are in place, the court is ready. "One should have no fear other than of God; insofar as we perform our duties well, we should fear no one. We will act with responsibility, adhering to the law, we have nothing else to do but assume the historic responsibility that pertains to us," she intoned. She said on behalf of the court that the magistrates felt they would have the support of the people in their decisions under the reforms. She added, "we express some concern for some officials who ask to continue with immunity, but the politicians gave clear signs that they are taking the right path, that they don't want privileges."

Lobo Sosa responded to Morales' pronouncements to let the legislative hand wash the judicial, giving public assurances that "there is a change for the better in the judicial power. The fear that exists in these issues is just, but we must have confidence in this power." He called removal of immunity one of the greatest actions of his term and said that, now, no one can say that electoral positions are bought to obtain immunity. With the immunity as yet unpublished and the antejudicio by no means assured, prosecutors ready to bring cases wait in the wings. A confident Dubon sought to dampen their enthusiasm with a caution for them to forget about sending documentation of cases to the Congress and just send them directly to the CSJ. It will be a month or more, by legislative scheduling, before Hondurans know if he is bluffing.

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