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Constitutional Way Cleared For Cafta In Costa Rica; Referendum Is Next

by Mike Leffert

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The question of the constitutionality of the Central American Free Trade Agreement (CAFTA) in Costa Rica is settled (see NotiCen, 2007-04-19). The way is now clear for an Oct. 7 referendum on whether Costa Rica will become the sixth and final country to join the pact, as justices of Sala IV of the Corte Suprema de Justicia (CSJ) voted 5-2 to uphold the treaty's provisions. If pro-CAFTA forces win the day, Costa Rica will be last to become a functioning member of the pact. It is the first and only country to decide the question by popular vote (see NotiCen, 2007-05-31).

The court's decision was met with derision by groups opposed to CAFTA. Demonstrators entered the courthouse without violent incident chanting, "Sala sold out to the bourgeoisie," and "Sold out Sala, shame of the country." The groups were organized by the group Mujeres de Blanco (Women in White) and included union, student, and other groups in opposition. They now face a state united in support of the trade agreement as the judicial system joins the executive and legislative branches. Said Albino Vargas of the country's largest union group, the Asociacion Nacional de Empleados Publicos (ANEP), "The three powers remained united as one."

Separation of powers blurred Vargas and others accused President Oscar Arias and his brother Rodrigo, minister of the presidency, of influencing the high court. "It appears there is a citizenry very indignant with a decision politically lobbied from the presidential palace. It is a decision that leaves the theory of separation of powers in a republican system in the text books." The disappointed former presidential candidate who sought the referendum that will finally decide the fate of CAFTA, Miguel Corrales, lamented, "In the Sala the words and spirit of the law lost their significance." He said, "They taught me that we must respect the resolutions of the courts, but faced with this aberration.... Here the Sala calls the presidential palace to see how they want the resolutions. It is as if the president was making a suit to order."

Rector of the Instituto Tecnologico de Costa Rica (ITCR) Eugenio Trejos was more circumspect in his pronouncements but also suspected something wrong with the decision. "We courageously denounced that the FTA has constitutional problems. We supported democratic institutionalism, but we will be very vigilant of the harm done to it [by this decision]."

Least reticent to give full vent to the discouraging decision was the Comision Nacional de Enlace (CNE), an organization of representatives of 30 opposed groups. Their news release called the Sala action "a corrupt and vandalic coup d'etat. Neither the Sala IV nor the Tribunal Supremo de Elecciones (TSE) deserves any respect because today they are simply instruments of an arrogant oligarchy that is driving the country into decline." CNE representative Jorge Coronado questioned the integrity of the court and accused it of not having even read the texts of the treaty. "They [the judges] would have us believe that, in just one month, 3,000 pages of a document almost unintelligible for most experts were read in depth."

This is not the first time the CNE has tangled with the constitutional justices. It roundly criticized Sala IV in 2005 for its decision to allow Oscar Arias to run for president again after having served previously from 1986 to 1990. The Constitution is vague on whether subsequent, but not successive, presidential terms are allowed. This court said they are, and the CNE resolved before the election not to recognize the legitimacy of an Arias government if he won, which he did by only a hairsbreadth. The CNE has since capitulated on that issue, but now says it does not recognize the court's decision.

The group encompasses some of the nation's most powerful unions, including the Frente Interno de Trabajadores del Instituto Costarricense de Electricidad (ICE), the Sindicato de Empleados de la Universidad de Costa Rica (SINDEU), the Union Nacional de Pequeños Productores Agropecuarios, and the Sindicato del Hospital San Juan de Dios. The CNE has prepared a manifesto against the court decision that said the court "completed the burial of what was left of Costa Rican juridical institutionality, demonstrating that the separation of powers is simply rhetorical." It charged the court was once again "folded into the power of the Ariases," as it was when it approved the president's candidacy.

Taking on the TSE, the manifesto said, "The TSE has lost all legitimacy from the last presidential election in which it supported an electoral fraud that permitted Oscar Arias to today be president of the republic." The manifesto called for a "plan of actions" that would, "through mobilization and popular organization, defeat this neoliberal dictatorship that governs us." The government took umbrage at the opposition's cheek.

Rodrigo Arias considered the statements threats and told reporters, "It is very sad that some groups depart from the debate of ideas, prudence, and responsibility and resort to disqualifications against the different powers and authorities of the country. These groups are not even capable of respecting a vote of the Sala Constitucional and prefer to resort to threats and insults against the democracy and institutionality of Costa Rica rather than face the lack of arguments to defend their position." President Arias' brother specifically denied having intervened with the court, and TSE president Antonio Sobrado said, "The Tribunal Supremo de Elecciones is an institution totally independent, whose decisions are taken responding to what the political Constitution, the law, and our conscience as magistrates dictate."

The two dissenting Sala IV justices found CAFTA unconstitutional on seven counts. They found that treaty provisions on intellectual property, conflict resolution, national territory, the environment, and others all violated the Constitution. The dissenting justices also found the legislative handling of the treaty violated the Constitution on four counts. They said that it was not reviewed as the Constitution requires and that, because a Spanish language text was not available until a month after it was signed, democratic principles had been violated.

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