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Costa Rican Congress-Supreme Court Clash as Magistrate’s Re-election Sparks Institutional Crisis

by George Rodríguez

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Costa Rica’s Constitution states that the unicameral Asamblea Legislativa (AL) elects the 22 magistrates making up the Corte Suprema de Justicia (CSJ) and decides whether to re-elect them or not—the latter requiring an affirmative vote of at least 38 of the 57 AL deputies.

It has been customary to re-elect magistrates as their eight-year terms near their end, a tradition befitting this Central American nation’s habitually tranquil political and institutional scene. But within the context of an increasingly agitated political scene, this tradition took a turn this year.

The term of Magistrate Fernando Cruz, a member of the CSJ’s Sala Constitucional (also Sala IV), ended in October, and, a month later, a 38-vote majority made up of the 24 deputies of the governing social democratic Partido Liberación Nacional (PLN) plus allies from minority blocs decided not to re-elect the judge.

Cruz is known for his independent stand on critical issues, and his positions have been reflected in usually minority votes cast as a Sala IV member. Among other polemic issues, Cruz opposed the Central America Free Trade Agreement (CAFTA) between Central American nations and the US (NotiCen, Sept. 29, 2005, and Nov. 13, 2008), as well as laws passed for its implementation, and he backed an appeal against an open-pit mining project opposed by environmentalists and other civil society organizations (NotiCen, Aug. 26, 2010, and Dec. 8, 2011).

And, together with fellow members of Sala IV, the judge also opposed the AL’s passage of a tax-reform bill pushed by the present administration, thus rendering it void.

CAFTA and the mining project were promoted—successfully in the former case, unsuccessfully in the latter—by the previous PLN administration, the second of two governments headed by President Óscar Arias (1986-1990, 2006-2010), winner of the 1987 Nobel Peace Prize.

Vote was "to send a message"

When he explained the majority vote of Nov. 15, Deputy Favio Molina, head of the PLN bloc in the legislature, repeatedly said that it was a message specifically sent to Sala IV, although none of the legislators who voted against the magistrate’s re-election cast doubt on Cruz’s integrity nor did they ever explain the reason for supporting the vote against Cruz.

Molina claimed that the court had gone beyond its authority vis-à-vis the legislature in rulings that have put to question the contents of bills passed by the AL or the procedure followed for passage. "What we did was vindicate the Asamblea Legislativa as the country’s first branch," as well as "telling the Sala to mind its own business," Molina said a day after the vote.

Molina also criticized the CSJ’s work, saying that it "is not complying with the principle of speedy and fulfilled justice." Molina repeatedly stated his opinion in press statements and interviews with media, thus stirring the local political scene.
In the Asamblea, one of the most outspoken critics of the vote and of Molina’s expressions was Luis Fishman of the Partido Unidad Social Cristiana (PUSC). A former security minister and PUSC presidential candidate, Fishman said, "If that’s what Don Fabio says, that it’s a wake-up call to the court, they picked on the wrong person."

"You don’t just take the first person that comes up and execute them for the reasons Don Fabio points out. If the reason is that a blow had to be dealt to the court, you can’t do it as if it were a game of roulette," Fishman said, adding that Cruz is "an intelligent, brave, and honest man."

The deputy went further and appealed the vote before Sala IV, in an effort, as he said, "to overturn the decision." As the Sala agreed to take the appeal for study, the vote and its effects are presently suspended, and Cruz is back in his post.

Meanwhile, more reactions were being voiced as well as allegations that the executive had influenced the majority vote in the Asamblea, and both were seen as tantamount to violating the independence of the judiciary.

Cruz speak out

One such voice was that of Cruz. Two days after the vote, Cruz was quoted by the local daily La Prensa Libre as saying that politics "is unavoidably always" infiltrating justice "because if magistrates are appointed by the country’s most important and most transcendental political branch, which is the parliament, there’s bound to be infiltration" and that, "in the independence of the branches of government, there’s always great tension."

"The political culture that had prevailed until the day before yesterday [Nov. 15] was that if there was to be no re-elections it had to be for serious, justified motives. That was the policy, but the waters changed, and they said, ‘We have nothing against Don Fernando....It’s a change in the course of relations between [state] powers,’" said Cruz. "They don’t re-elect me, and I don’t know why, it’s a political act requiring no motivation, as all political acts. It would seem that it’s nothing personal but that I serve as a warning to the other magistrates to be much more careful in what they rule. But they don’t say what we ruled wrongly on or what we went too far on."

"I’m the first one they lash the whip at to say that [magistrates] must be more careful with their rulings. Myself being the one seeking re-election, it was a way of saying, 'See what’s happening to Don Fernando. We showed him the red card and the rest the yellow card,’” Cruz added, referring to the respective soccer signs for expulsion and warning.

The situation escalated to a showdown between the legislative and judiciary branches, and President Laura Chinchilla called for a meeting of the three branches’ top officials.

Meanwhile, CSJ president Luis Paulino Mora, the 22 magistrates, and Fiscal General Jorge Chavarría headed a peaceful demonstration—called La Marcha del Silencio (the silent march)—from CSJ headquarters to the nearby seat of the Asamblea, in downtown San José. The purpose was to support Cruz, repudiate the vote against the magistrate, and support the independence of state powers.

Mora told participants, just before the start of the March 22 demonstration, that "today, we express ourselves in defense of one of the most precious qualities of the judiciary—its independence—which
allows the judge to become the guarantor of human rights, and to clearly state our displeasure at the wound inflicted on Costa Rica’s judiciary."

Two days later, Cruz told a press conference, "A step has been taken that I hope is not the first step toward 'democradura'—toward a dictatorship in a democracy."

Twelve days after the crisis erupted, Chinchilla, Mora, and Asamblea Legislativa president Víctor Emilio Granados held the meeting that the president had called for. The result was a three-way commitment to maintain a dialogue aimed at promoting institutional reforms to improve the quality of democracy in Costa Rica. They also emphasized respect for the judiciary’s independence, as stated in the declaration they signed and Chinchilla read to reporters after the hour-long meeting.

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