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Recommended Citation
Rodríguez, George. "Honduran Magistrates Opposed to Police-Purge Law Sacked by Congress; They Appeal to Supreme Court." (2013). https://digitalrepository.unm.edu/noticen/10034
Honduran Magistrates Opposed to Police-Purge Law Sacked by Congress; They Appeal to Supreme Court

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Category/Department: Honduras

Published: 2013-01-24

The Honduran Congress passed a decree on May 24, 2012, that unleashed a complex series of events—as series of events usually are in this Central American nation.

Congress decreed a national emergency regarding public safety to allow for a speedy and reliable process to cleanse the Policía Nacional (PN). The law for a police purge—the Ley Especial para la Depuración Policial—thus came into being. President Porfirio "Pepe" Lobo signed it the following day.

In force for six months, the law, which partially suspended the Ley Orgánica de la Policía, called for members of the police to undergo pruebas de confianza (trust tests). The tests aimed at detecting the use of drugs, establishing psychological fitness, and determining whether property owned by officers was consistent with their salary levels. The tests included the use of a polygraph—lie detector.

Upon signing the law on May 25, the president said, "We're certain that this powerful instrument passed by Congress will make it possible...to accelerate the process of purging the police," which he said was "imperative."

Congressional president Juan Orlando Hernández, of the rightist ruling Partido Nacional (PN), said during the event that the law was passed with "the hope of contributing to having a police force that the Honduran people trust." Hernández was referring to constant allegations of police corruption, including involvement in crime—even organized crime such as drug trafficking.

Some of the most notorious recent cases of such involvement include the October 2011 murder of two university students—one of them the son of Universidad Nacional Autónoma de Honduras (UNAH) rector Julieta Castellanos—and the May 2012 homicide of a well-known radio journalist who had been kidnapped a week before (NotiCen, Dec. 15, 2011, and June 14, 2012).

World's most violent country

The general homicide rate in Honduras has skyrocketed since the 2009 coup (NotiCen, July 2, 2009), rising some 20 percentage points. The rate was around 66.8 per 100,000 inhabitants when President Manuel "Mel" Zelaya was toppled, and it reached 86.5 in 2011, with an almost imperceptible drop to 85.5 last year, according to UNAH's Observatorio de la Violencia.

In daily frequency, the average number of violent-death cases increased from 19.47 per day in 2011 to 19.65 in 2012, according to the Observatorio (NotiCen, Jan. 26, 2012), and the local daily newspaper El Heraldo reported this month that "Honduras has been classified as the most violent country in the world, above nations with wars."

The office of the Comisionado Nacional de los Derechos Humanos (CONADEH) says that the local rate is four times worse than the Latin American average and almost 10 times the world average.
On Nov. 26, some six months after Congress passed the purge law, according to which all police not passing the tests had to be immediately discharged, the five magistrates of the Sala Constitucional, who studied two appeals against the law, were ready to rule. The 4-1 decision found the law unconstitutional, but since it was not unanimous it was not binding, according to a legal source quoted by the local daily La Prensa.

The magistrates said the law contained six unconstitutional aspects, including violating the rule of law as well as the dismissed police’s presumption of innocence and their right to a defense against the charges. Of the 1,200 police who took the tests, 230 were dismissed during the six months the law was in force.

Judicial independence on the line

Ten days after the law expired, an angry President Lobo, quoted by daily La Prensa, told a Dec. 4 Cabinet meeting that "Honduras is in mourning" because of the magistrate’s vote.

The head of state went on to ask, "Which side are they on? The side of the criminals or the side of this country’s honest people?" He added—pounding his fist on the table, according to the daily—"I tell you this disappoints me, I tell you honestly. This is not just any irregular action, this is about men in arms, in arms, I tell you. It’s sad."

The president’s remarks prompted a response from the 15 magistrates of the Corte Suprema de Justicia (CSJ), who, the following day, in a six-point communiqué, rebutted the president’s remarks.

"In the name of institutional peace and in observance of the principles of the (state’s) powers, we consider that all attacks on the independence of the judiciary and on democratic institutions must cease, since the state’s powers have no more attributes that those set by the law," they said, also referring to the congressional dismissal of their four colleagues. "It is once more affirmed that the Sala Constitucional and the Corte Suprema de Justicia will definitely keep playing their democratic role."

CSJ president Jorge Rivera told the press conference that, "because of the latest events where the Honduran judiciary was involved, and since our independence has somehow been disrespected, we, the CSJ judges, have signed a communiqué for all the Honduran people."

In its Dec. 12 session, after midnight, Congress had dismissed the four magistrates—Gustavo Enrique Bustillo, Rosalinda Cruz, José Antonio Gutiérrez, and Francisco Ruiz.

Six days later, the Federación Centroamericana de Asociaciones de Juezas y Jueces Democráticos (FCAJD) issued a statement in support of their Honduran colleagues. The magistrates were "summarily removed…and those dismissals are, no doubt, illegal," since "the magistrates who were the target of reprisals were not granted de right to defense within due process," the regional judges pointed out.

"This action by the Honduran legislative branch shows a serious attempt against judiciary independence and sets a terrible precedent for the division of powers established in the Honduran Constitution and in international treaties, which state that judges, under no circumstance, may be dismissed because of their rulings, as has happened in this case, by the legislative branch," the FCAJD warned.
The much-criticized congressional action was countered, by means of appeals before the Sala Constitucional, by both the Barra de Abogados Anticorrupción and the four sacked magistrates.

Meanwhile, the congressional action against the judges was described by different sectors as illegal and as a coup. "What has happened is a coup, it can’t be called any other way, and the instigators of this new illegal and unpatriotic action are Porfirio Lobo and Juan Orlando Hernández, and after this they can do anything, including close down media," said analyst Edgardo Rodríguez.

Minority Partido de Innovación y Unidad-Social Democracia (PINU) Deputy German Leitzelar, a lawyer and a former labor minister, said, "Parliament made a mistake in removing the magistrates."

The complex case is now in the judiciary’s hands. A five-strong Sala Constitucional Especial was appointed this month by CSJ president Rivera to specifically study and rule on the appeals against the magistrates’ dismissal. With Rivera as the group’s coordinator, the other four judges accepted their appointment on Jan. 18—made the previous day—and could be ready to rule this week, according to El Heraldo.

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