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Overhaul of Argentine Supreme Court

by LADB Staff

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Argentine President Nestor Kirchner's efforts to overhaul the Corte Suprema de Justicia (CSJ) have been aided by one justice's resignation and the investigation by Congress of another. Since the presidency of Carlos Saul Menem (1989- 1999), the judiciary has been marked by corruption and conflicts of interest that affected many of the decisions it handed down.

Signaling the latest change in the court, on Oct. 23, Justice Guillermo Lopez handed in his resignation, effective Dec. 1, to avoid an imminent impeachment trial for malfeasance. The announcement came just hours before a meeting of the impeachment committee of the Chamber of Deputies, which had been convened specifically to study the charges against Lopez. If the committee had found that the charges had merit, it would have recommended that the Senate remove Lopez from the bench. The judge's resignation reportedly surprised his colleagues, but the government said that it was "an important step toward improving the functioning of the tribunal."

Committee chair Deputy Ricardo Falu said Lopez's resignation helped to end an era in which "the executive and judicial branches exchanged favors to guarantee impunity" for serious crimes a reference to a number of much-criticized CSJ rulings in the 1990s.

Cabinet chief Alberto Fernandez said that Lopez resigned for "absolutely personal" reasons, but he added that the decision was "in line with the idea of giving new oxygen to the judicial system, and to the CSJ in particular." The Asociacion de Abogados Laboralistas (AAL) is one of the groups that has organized weekly protests outside the CSJ since December 2001, demanding that all of the justices step down.

AAL secretary general Monica Jensen said she was pleased that Lopez resigned. But she said it would be better if the judges accused of corruption were tried because, if they were found guilty, they would lose the benefits that they retain if they merely step down, including a pension of nearly US\$5,000 a month. Jensen said she would continue demanding a complete overhaul of the CSJ. She said that "this court systematically ruled against the rights of workers, and the judges who did not act wrongly through commission did so through omission."

Dismantling the "automatic majority"

Lopez is the third judge who has resigned from the nine- member court, and a fourth judge has been suspended all of them members of the "automatic majority," the group of judges who voted solidly in the interests of Menem, who appointed them when he reorganized the court in 1989. Another member of the "majority," former CSJ president Julio Nazareno, resigned June 27 to avoid his impeachment on charges similar to those against Lopez (see NotiSur, 2003-07- 04).

The automatic majority's deference to Menem translated into polemic decisions, some of which are the basis of the accusations against them. One case in which both Lopez and Nazareno, as well as Justice Eduardo Moline O'Connor, were involved was the Macri case, in which a much-criticized CSJ decision let business tycoon Francisco Macri, accused of car smuggling and tax evasion, off the hook. Moline O'Connor subjected to impeachment Meanwhile, the lower house was continuing the impeachment process against Justice Moline O'Connor.

On Oct. 8, the judge appeared before the Senate to offer new arguments against his removal. One of the judge's lawyers, Gregorio Badeni, said that if Moline O'Connor were suspended, they would appeal to the CSJ and eventually to the Inter-American Commission on Human Rights (IACHR). Badeni said, "Once we have received notification of the Senate action, we have 10 working days in which to file an appeal with the Senate to take the matter to the CSJ, with the hope that it would declare the suspension unconstitutional."

On Oct. 9, the Senate voted 40 to 18 to suspend Moline O'Connor, pending the outcome of the impeachment process. Except for three senators closely aligned with Menem, most senators from the governing Partido Justicialista-peronista (PJ) voted for the suspension. Sen. Cristina Fernandez, wife of the president and head of the impeachment committee, strongly criticized the judge and backed the suspension. Moline insisted the charges against him were "political discrimination."

On Oct. 10, he said he would not resign and he would appeal to his colleagues on the CSJ to rescind the suspension. However, court sources said that at least three CSJ judges plan to recuse themselves if Moline files an appeal.

Meanwhile, on Oct. 30, Congress began investigating the more than 100 complaints against another CSJ justice, Adolfo Vazquez. Deputy Ricardo Falu, head of the impeachment committee of the lower house, said the legislators had begun examining the complaints against Vazquez, another of the "automatic majority." Kirchner nominates judge to fill vacancy Meanwhile, Kirchner proposed Eugenio Zaffaroni to replace Nazareno on the high court.

Zaffaroni is a criminal lawyer renowned in Argentina and abroad for his defense of human rights. He is a former head of the UN Latin American Institute for the Prevention of Crime and the Treatment of Offenders. He has the support of universities, human rights organizations, and various law associations. The right tried to block approval of Zaffaroni, accusing him of irregularities in his tax returns.

Some analysts said the real cause for their opposition was the judge's positions supporting the defense of human rights, legalization of abortion, decriminalization of drug possession for one's own consumption, and support for the rights of those being detained and processed. By a 46-16 vote on Oct. 16, the Senate ratified Zaffaroni's appointment, with the backing of human rights activists, leftist parties, and civil-society leaders. He will join the court on Oct. 31. Zaffaroni thus became the first judge confirmed to a seat on the high court under the new process introduced by Kirchner, which includes public scrutiny through open meetings and the public presentation of pros and cons regarding the appointment.

Before, judges were automatically appointed by the president. After his confirmation, Zaffaroni promised to fight against corruption in Argentina, and especially to fight to eradicate the shadow of corruption that has covered the CSJ. He said his decisions would be "the most just and correct possible."

Kirchner achieving his goal

Until recently, accusations against CSJ judges and demands for impeachment by opposition lawmakers failed to prosper in Congress because of the lack of support from the PJ and the UCR. Last year, however, the government of former President Eduardo Duhalde (2001-2003) gave its support to the complete renovation of the court, which led to an attempt to impeach all of the justices.

Although that effort failed, it prompted the resignation of Justice Gustavo Bossert, who claimed "moral exhaustion" because of the constant accusations against the court, which he said was "political persecution." Duhalde nominated then Sen. Jose Luis Maqueda to fill the vacancy left by Bossert.

Just two weeks after taking office on May 25, Kirchner accused the court of using its rulings to block his administration's initiatives, such as decisions involving the financial system. He asked Congress to hold separate impeachment trials for each magistrate. The Congress began with an investigation of Nazareno, who had the most questionable links to Menem. Now that Kirchner has succeeded in making some radical changes to the court, Argentines are watching to see whether the changes really will breathe new life into the tainted court.

Kirchner was accused of browbeating the judicial system during the decade he served as governor of Santa Cruz, and his critics will be looking for any signs that he is not committed to a truly independent judiciary. His nomination of Zaffaroni was a good sign, since the jurist has impeccable credentials and proven independence despite political leanings not unlike those of Kirchner.

With the new openings, the president will have another opportunity to show that he means what he says about an independent and transparent court. There is speculation that Kirchner will propose a woman to fill the next court vacancy. One name mentioned frequently is Carmen Argibay, currently serving on the International Court of Justice at The Hague. Argibay, who spent nine months in prison during the military dictatorship, is a specialist in criminal law and was tapped in 2002 by the UN to be included among the 27 judges hearing cases of crimes against humanity related to the Balkans war (1992-1996).

Deputy Marcela Rodriguez, of the center-left *Afirmacion para una Republica Igualitaria* (ARI) and author of the book *Women and Justice*, presented a bill in June that would set a quota for women justices on the CSJ. Such quotas already exist for both houses of Congress.

"The absence of the female perspective in the court perpetuates the exclusion of women in public life," says the bill, which proposes that there cannot be more than 70% of either men or women on

the bench. Because Kirchner has significant popular support, it could be tempting to try to do what his predecessors have done and stack the judicial deck in his favor. If he resists that temptation, say analysts, it will do a lot to prolong the high approval that he has enjoyed in his first six months in office.

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