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Andrés Gaudán

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Alberto Nisman Case Sparks Major Power Struggle in Argentina
by Andrés Gaudín
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Relations between the executive and judicial branches of the state have entered into dangerous territory following the suspicious death earlier this year of Alberto Nisman, a federal prosecutor who had been investigating the biggest terrorist attack in Argentine history.

The heated standoff between these two pillars of power has involved an almost daily tit for tat, with the president’s office accusing judges and prosecutors of leading a campaign of democratic destabilization, while the judiciary reopens cases and issues verdicts adverse to the government and to victims of human rights abuses, a key policy issue for President Cristina Fernández de Kirchner (CFK).

Nisman was found dead Jan. 18 in what appeared by all indications to be a suicide (NotiSur, Feb. 6, 2015). Just days before, he had accused the president and Foreign Minister Héctor Timerman of signing a Memorándum de Cooperación Judicial entre Argentina e Irán as a way to shield Iranian diplomats who, according to one hypothesis at play, were responsible for a deadly July 1994 attack on the Asociación Mutual Israelita Argentina (AMIA), a Jewish community center in Buenos Aires. The terrorist attack killed 85 people (NotiSur, July 29, 1994).

The accusation was the only thing that Nisman, who had no evidence to back it up, was able to come up with after leading the investigation for eight years. Two high-level judicial bodies have since rejected his assertions. The deceased prosecutor’s colleagues (judges and prosecutors), nevertheless, have sided with his ex-wife, herself a judge, who insists that Nisman was the victim of "institutional magnicide" and wants his claims against CFK and Timerman to be further investigated. They have thus doubled down on Nisman’s risky bet and, indirectly, painted this as a homicide case orchestrated by the government.

Trading punches
The judiciary’s campaign against the government began on Feb. 18, exactly one month after the prosecutor’s death, with a massive street march that enjoyed support from the country’s major media outlets and the political opposition. Since then, the confrontation has lost all sense of limits.

Days after the demonstration, CFK used social media networks to publish an "open letter to the Argentine people" in which she said that Feb. 18 marked the "the coming out of the already evident Partido Judicial, which undermines the government and looks to establish itself as a superpower that operates above the institutions put in place by popular vote." She went on to say, "The Partido Judicial functions as a new kind of battering-ram against elected governments, replacing the Partido Militar, which, in the tragic past, assumed the role of toppling legal and legitimate democratic governments."

Next came the two higher-court rulings that dismissed Nisman’s accusations and criticized the judges and prosecutors who commemorated his death. Tributes held on the second- and third-
month anniversaries of the prosecutor’s death failed to attract even 20 people. Aware that they could no longer mount a successful street movement, anti-government forces in the judiciary focused instead on issuing adverse rulings. Corte Suprema de Justicia (CSJ) President Ricardo Lorenzetti, in the meantime, began assuming an openly political role, something unheard of in the history of the Argentine legal system.

In a subsequent Twitter message, the president again likened the actions of her opponents in the judiciary to those of the military in times past but said that, instead of violent coups that interrupt the functioning of state institutions and toss out the Constitution, the strategy employed now is more sophisticated. "The judges coordinate with business leaders and, especially, with a monopolistic media apparatus to destabilize the executive branch and disregard decisions by the legislature," CFK wrote. In doing so, this particular group of people—"who were not elected by popular vote"—place themselves above the rest of the democracy’s institutions, the president argued.

CFK accused the judges and prosecutors of fabricating lawsuits that serve their interests while "keeping others locked up in file cabinets." She cited various examples, including an agreement reached with Iran that was signed by the executive and ratified by the legislature but that the judiciary, "for the first time in history, declared to be unconstitutional."

The president went even further in her criticisms of what she calls the Partido Judicial by noting, "It doesn’t participate in elections and its members don’t pay taxes." They "enjoy their positions and prerogatives for life—there’s even one case [of a judge] who is close to completing a century," she added, in clear allusion to Carlos Fayt, a CSJ judge who recently turned 97 and refuses to retire despite complaints among colleagues that he no longer has the mental faculties to handle such a high-responsibility position.

"These are the ones behind the unheard of demonstration of Feb. 18, which was as unusual as it would be if the Cabinet organized a protest demanding the administration do a better job of managing government affairs," she said.

**Judgment reversals**

The judiciary then turned its attention to the area that perhaps most hurts the government: its human rights policy. When it comes to dictatorship-era human rights cases, Argentina has set itself apart from other countries in Latin America by trying and convicting not just military personnel but also civilian collaborators (NotiSur, July 11, 2014). More recently, though, the judiciary has suddenly backtracked.

In the days just before and after March 24, the 39th anniversary of the bloody coup that ushered in the country’s last dictatorship (1976-1983), the judiciary made various decisions benefiting powerful business people and companies being processed for aiding and abetting the regime, which disappeared some 30,000 people and forced tens of thousands into exile.

Trials against car companies Mercedes Benz and Ford Motor took various steps back, and three civilians who were emblematic dictatorship collaborators were surprisingly exonerated in rulings that aroused suspicions given that they were issued starting March 13, less than two weeks before the painful coup anniversary and amid the ongoing conflict between the state’s executive and judicial branches.
Regarding the business people, whose first-instance convictions had already been upheld in an appeals court, the Cámara Federal de Casación, in a third-instance hearing, granted attorney requests that the indictments be overturned. Among those who benefited from the decision were Vicente Massot, director of the far-right daily La Nueva Provincia, and Pedro Blaquier, owner of Papelera Ledesma, where several people, including union leaders and even the mayor of the city where the plant was located, disappeared in 1974.

Two days later, another court decision benefited the top directors of the opposition dailies Clarín and La Nación who are accused of collaborating with the military in appropriating the company that monopolizes the manufacture and distribution of the paper used for printing all of the country’s newspapers (NotiSur, Oct. 1, 2010).

**Lessons on limits**

Martín Fresneda, Argentina’s national human rights secretary, said it seemed odd to him that three decisions absolving civilians implicated in state terrorism would be handed down in just one week. "These successive rulings aren’t a coincidence. Nor," he said, "should they be decontextualized" from the standoff between executive and judicial branches.

The rulings also caught the attention of Alan Iud, a legal coordinator with the Abuelas de Plaza de Mayo human rights group. "It doesn’t go unnoticed by anyone that these rulings took place after the Feb. 18 march and at a time when the judiciary is showing itself to be more impervious to the political, economic, and social changes that have been underway in this country in recent years," he said.

The situation took another turn, this one very much unexpected, on April 22 when the CSJ made two particularly transcendent decisions. First, the high court annulled the complete list of associate judges that the executive—with prior approval by the Senate—had nominated to serve in the CSJ in cases where the latter does not have enough judges to issue a ruling. After two justices died and a third retired, the high court currently has just four members, including Fayt, who hardly participates any more in sessions.

Second, the CSJ decided to hold its internal leadership election that day—as opposed to next February, when the vote was supposed to take place. Lorenzetti, who has already served two terms as the high-court president, was re-elected. Analysts believe the CSJ, by advancing the election, wanted to demonstrate its power and thus send a message to the government.

A week later, Lorenzetti took aim against the executive, saying that crime has risen in Argentina and that the government is at fault for not coming up with a policy to combat drug traffickers. He ended his speech with a striking statement: "We judges don’t govern, but we place limits on whatever government is in power."

CFK’s Cabinet Chief Aníbal Fernández responded with his own lesson on limits, reminding Lorenzetti that nowhere in the Constitution or in Argentine law in general is the judiciary granted that kind of power over the other branches, "especially not over people who have been elected by the will of the people, which is precisely not the case of the Corte Suprema [justices]."

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