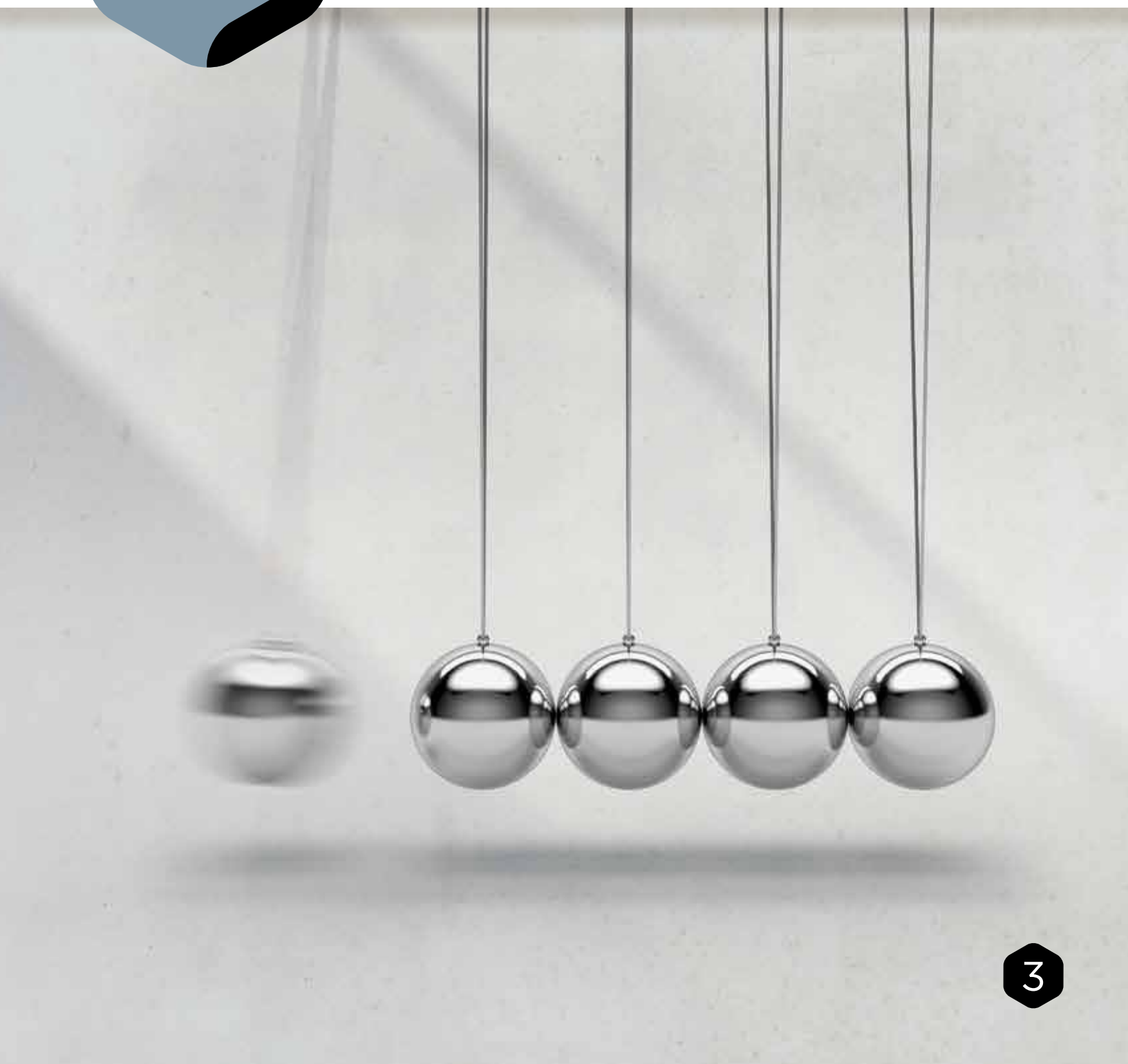
State of Justice

CHAPTER 1



Third State of Justice Report

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Post Scriptum

Once the edition of the third State of Justice Report was completed, the country and the world entered a period of health emergency due to the Covid-19 pandemic.

This situation dramatically changed the economic and social environment of the Judiciary and has affected its very functioning. The magnitude of the impacts that this pandemic will have on the living conditions, production, and work of the population, as well as on public finances is unknown since it is an ongoing and unprecedented process. However, it is known that, to this day, these effects have already been deep and radical due to a global economic shock that has caused massive destruction of employment and wealth in many countries, ours as well. Once Costa Rican society overcomes the pandemic and begins its recovery, the Judiciary will face an unprecedented situation that will entail even more complex challenges than those outlined in this Report.

Faced with this serious situation, the State of the Nation Program considered it essential to prepare this Post scriptum to offer a new reading of the key messages of the Report, with lenses adapted to the new situation. Certainly, it is impossible to predict the situation that the Judicial Branch will face in the coming years, however, there are some risks that were identified in Chapter 1 of this edition that have already materialized and others that can be foreseen.

In our opinion, the strategic analysis carried out by the Third Report continues to maintain its validity on the fundamentals, albeit not in all details, but the new events make a brief comment unavoidable.

The Judiciary has had to take extraordinary measures. In effect, the health emergency caused the suspension of hearings that are not considered urgent in the trials conducted by the Judiciary, for a three-week period. Cases are exempted if the trial has already started, to avoid grounds for nullification, or if they involve domestic violence, precautionary measures, preventive detention, and any other situation where life, liberty, health, or the best interests of people in conditions of vulnerability are at risk.

The Supreme Court met several times in the span of two weeks to decide the institutional response to the emergency. The magistrates were split between those who proposed to completely close the institution and those who proposed the suspension of hearings, amid strong pressure from judicial workers' organizations for complete closure. The latter option prevailed. This debate demonstrated the difficulty of collective management of administrative decisions by people who are not specialists in management, deciding in a legal forum in the face of an epidemic. This situation only corroborates what is indicated in the second key message of this Report.

Second, the national budget, source of income for the Judiciary, will be strongly affected by the handling of the pandemic. The institution's resource base is expected to be tighter than in recent years. The Report confirmed the end of the long cycle of expansion of public investment in justice and the entry into a new phase of budgetary tightness as of 2018, but the current situation is substantially more serious, although without changing the trend noted. Never in recent history has the Judiciary had to deal with such a significant contraction in its budget as can be now anticipated. This will force the Judiciary to maximize efficiency and effectiveness in internal management, and prioritize resources in circumstances of scarcity, with an even greater urgency than that indicated in the Report. Even in a scenario of compliance with the 6% of the Government budget assigned by the Constitution to the Judicial Branch, this can represent a sharply reduced base with respect to the current amount.

The third foreseeable consideration is that, if the country enters an economic and social crisis as a result of the pandemic, the demand for judicial interventions will increase, in a country with already a high litigation rate. Consider the new lawsuits that will be coming into the system due to labor cases, bankruptcies, judicial collections, common crime, among others. Considering the strong budgetary restrictions that the institution will have, meeting an increase in the demand for services will be a challenge for the Judiciary, particularly in some matters for which the system is already overburdened. They will have to do more with less: to do this they will have to reverse the trends of decreasing productivity per judge and increasing costs per case, without harming the quality of justice services.

In Chapter 1 of this report, we state that the Judiciary faces a multi-risk scenario. In this scenario, the threats of the political context, the persisting weaknesses, the bottlenecks in the vertical management of the institution, as well as the political crisis in judicial governance, are factors that can affect the resilience of the Judiciary due to the extraordinary situation. It is true that, at present, the multi-risk scenario is materializing, not so much because of the deepening of the political crisis, but because of a dramatic change in the context. We arrived at the scenario described in the strategic analysis, although for reasons other than those foreseen. Regardless of how the current difficult situation emerged, there is no doubt that it puts pressure on the Judiciary to address its management problems, within a framework of contracted resources and expanded demand for services. As in any social crisis, the Judiciary as a guarantor of the Democratic Rule of Law is crucial to guarantee the fundamental rights of citizens, given the drastic measures that governments must adopt.

One of the key messages of the Third Report was the need to promote innovation, the improvement of data, and the use of information and communication technologies as a tool to improve the quality of judicial services and judicial governance. In this emergency, this message gains new relevance to move towards electronic justice.

Legal matters that were previously unthinkable are being processed remotely; the telework that was prohibited to certain personnel has been effective; telephone lines, e-mails, and different platforms have been used as much as possible to prevent users from appearing physically at judicial offices. This is a forced push to consolidate some of the IT solutions that the Judiciary was already using, starting with the electronic proceedings, and that have been implemented in other countries. This is based on a concept of access to justice mediated by the use of state-of-the-art technologies, to bring the hearings and services to the person, instead of the person to the court building. Extensive use of technology also contributes to the reduction of costs, the improvement in the collection of information, and the traceability of processes, which will be essential to adapt the management of the Judiciary to a new environment.

Today there is no other possibility than a profound reform in the governance and operating modalities of the Judiciary. Both challenges, highlighted by the Third Report, are inescapable.

April 1, 2020

Chapter 1

Synopsis

1

Overall Assessment

The Third State of Justice Report assesses the performance of the Judiciary during the most recent years and up to 2018, according to the information available at the closing of this edition (end of 2019), the quality of which was verified. We analyzed topics selected by the Academic Advisory Council for this initiative, after extensive consultation.

During the period 2016 to 2018, the Judiciary experienced a severe and unusual political crisis in its governance due to the convergence of three events, and the interaction of their effects:

- A public corruption scandal that involved senior officials of the institution, including its president. This led to early retirements and penalties for several magistrates, including the removal of one. This chain of events also led to an unexpected and significant rearrangement in the composition of the Supreme Court of Justice.

- The approval of fiscal austerity laws by the Legislative Assembly in response to the insolvency in public finances. This marked an abrupt end to the long expansion of investment in the Judiciary experienced during the first two decades of the 21st century. It also modified the institution's labor and pension regime. Both events led to the first strike of judicial workers ever registered in the country, strong tensions within the Judiciary, and between the Judicial and Legislative branches, not resolved as of March 2020.

- The worsening of internal divisions in the Supreme Court in relation to the management of the Judiciary. This process made it difficult to promptly honor the public commitment of judicial authorities to promote reforms in the organization and functioning of the Judiciary, formulated in the heat of the aforementioned public scandal. This situation intensified the unsatisfied demands for changes in Governance and improvements in service, both from internal and external actors to the Judiciary.

All these events led to a rapid increase in the exposure of the Judiciary in the mass media and on social networks, a subject that is analyzed in greater depth in **Chapter 7** of this Report.

This media exposure, together with the transparency policy promoted by the Supreme Court, conveys major decisions to citizens with a sense of immediacy that requires better management of deliberations and greater preparation of communication strategies.

In summary, the political crisis in the governance of the Judiciary has created a delicate situation: a divided leadership which is, to a large extent, novel, will have to implement important changes in management, the employment regime, and judicial governance while navigating the difficult waters of insolvency in public finances and a predictable worsening of social conflicts due to low economic growth and cuts in public spending.

Overall Assesment

It should be noted that this crisis was triggered within the framework of a background situation that was already complex for the Judiciary.

On the one hand, since the beginning of the twentieth century, there has been a decreasing trend in public trust with respect to the Supreme Court and the courts, a characteristic that is shared with public institutions and Costa Rican democracy in general (Chapter 7).

From a comparative perspective, the country still maintains higher levels of public trust towards public institutions than the rest of troubled Latin America. However, not only have the distances with respect to the other nations of the continent, but today the levels of trust are not satisfactory. Two decades ago, citizen trust in the Judiciary was at the highest levels. At present, the population expresses clearly more skeptical attitudes.

Seen as a whole, the political crisis, in the context of the loss of public trust and internal management problems, has configured a multi-risk scenario for the Judiciary. The eventual materialization of one or more of these risks could significantly affect the fulfillment of the primary mission of the Judiciary in a democracy.

On the other hand, the Judiciary had been facing the pressures involved in meeting new demands for the expansion or improvement of its services, the promotion of procedural reforms in various jurisdictions, which implies the handling of new management challenges, and the efforts to overcome old deficits in judicial performance, particularly regarding judicial delay and the performance of justice operators.

Several of these internal management problems were widely documented in the previous State of Justice Reports and are taken up in this edition.

Seen as a whole, the political crisis, in the context of the loss of public trust and internal management problems, has configured a multi-risk scenario for the Judiciary. The eventual materialization of one or more of these risks could significantly affect the fulfillment of the primary mission of the Judiciary in a democracy.

Indeed, guaranteeing the human right to independent, timely, complete and equal justice for all people, so that social and political conflicts are dealt with by the institutions of the democratic State of law, requires broad belief in legitimacy among citizens, the management of tensions with other Powers of the State and a continuous and generalized improvement of the capacities and quality of the work of the judicial body. But these are exactly the factors that were affected in the period analyzed.

Only one of the events that fueled the political crisis in the judicial government is, by itself, problematic in any circumstance., Nevertheless, the simultaneous presence of the three creates a more complex situation for the Judiciary, not only due to the addition of problematic factors but also due to the interactions between them., At the systematic level, tensions between the Legislative Assembly and the Judiciary may affect the image of both Powers vis-à-vis the public and create more frequent conflict patterns that affect the management of matters of public interest.

At a judicial level, the convergent deterioration of factors forms new risks. The Persistence of a centralized style of judicial governance which concentrates administrative and jurisdictional powers in the Supreme Court, is a bottleneck that hinders timely responses to pressing management problems, which contributes to the decrease in the level of citizen trust regarding the Judiciary. . Additionally, the lack of substantive improvements in the efficiency of the judicial system, in turn, fuels the claims made to the institution at a time when, due to the delicate fiscal situation, it will have to defend the resources it receives.

Undoubtedly, the Judiciary has historical strengths that give it the ability to confront this multi-risk scenario:

- In recent decades, its leadership has been characterized by reformist dynamism: the institutions of the Judicial Power are not static, and as indicated in previous Reports, this reformist impulse has distinguished it within the entire Costa Rican public sector.

Overall Assesment

- Despite the decreased rate of expansion of resources allocated to the Judicial Branch as of 2018, investment in the administration of justice continues to be high, for which as enabled this Branch to deploy human, financial and logistical institutional capacities Throughout the national territory. This strength is remarkable when compared to its counterparts in the Latin American region.

- During the period analyzed, for the first time, organized citizen initiatives to advance judicial modernization were identified, supported by a set of collective media that echo the demands.

In summary, the Third State of Justice Report recognizes the capacities and resilience of the Judiciary in the face of the crisis but reveals the multi-risk scenario that it faces today and warns about the dangers of not addressing these risks.

The research synthesized in this Report analyzes, from this perspective, some of the main problems of the Judicial Branch. It seeks to contribute to the design and implementation of timely responses, based on information, to the problems it identified in order to bring the management of the administration of justice closer to the demands of citizens in a mature democracy such as that of Costa Rica.

Based on the evidence compiled in the six chapters that comprise the Third State of Justice Report, four key messages are presented that summarize the main findings of this edition:

- The political crisis of the Supreme Court did not stop the reformist impulse “from above” in the Judiciary.

- The governance of the judiciary has been systematically excluded from the reformist impulse.

- The procedural reforms in specific jurisdictions show mixed results, but they do not have a positive impact on the macro-management indicators of the Judiciary.

The Judiciary has historical strengths that give it the ability to confront this multi-risk scenario.

- Innovation in the generation and analysis of data can be an effective strategy to improve the performance of the Judiciary.

In the remainder of this chapter, each of these messages is developed in a separate section. In each, the relevant evidence that supports it is provided, according to the need of the argument, from one or more of the chapters of the Report. To guide the reading of those who are interested in knowing more in depth the topics covered in each message, the wording indicates the reference chapter and text boxes mention the primary information sources that were used as the basis for the analysis.

CHAPTER 1

Synopsis

First Message: The political crisis of the Supreme Court did not stop the reformist impulse "from above" in the Judiciary

During the period of the political crisis in his government, the Judiciary maintained the reformist impulse that, since the 1990s, gave rise to several waves of modernization (PEN, 2015). In the period under analysis, the design and implementation of a wide variety of initiatives, both legal and administrative, aimed at improving the opportunity, coverage, and quality of the services provided by the institution.

As in previous decades, in recent years the Supreme Court has been the main origin of these reforms, a characteristic that denotes what the Report calls the magistrate-centric style of management, or reformism "from above ".

This reformist impulse was analyzed in greater depth in this Report, providing new knowledge about what happened in the last three decades and expanding the information to cover the most recent years. Specifically, two areas were studied:

- The legislation approved by the Legislative Assembly in the period 1990-2018, referring to the powers assigned to the Judiciary. The purpose of this examination was to document the strong expansion of functions that, by legal means, were granted to this Power; make a first approximation about the structural consequences on the budget and operation of the institution, and determine the role (proactive or reactive) that the Supreme Court fulfilled in this process.
- The procedural reforms approved in the last decade (criminal, labor, and contentious-administrative), from their design to implementation and results. These case studies allowed us to better understand the ways in which, once approved by the Legislative Power, the Judiciary implements a reform and addresses, in a preliminary way, its consequences on the internal management of judicial affairs.

Both studies allow us to conclude that reformism "from above" has been associated with an important weakness: the disconnection between, on the one hand, the processes of design of change in legal norms, and, on the other hand, the planning processes of operational adjustments in the internal organization, investment of resources and personnel management that the reform has. While public investment in the justice system increased rapidly and steadily, as it did between 2000 and 2018, this disconnection was not critical, since the Judiciary could always allocate (some) new resources to attend to the implementation of the reforms. However, as of 2018, within the framework of fiscal austerity, the disconnection between legal change and operational change, has become a major institutional challenge.

Information sources

Reference to the web: Database of competences assigned to the Judiciary through the approval of laws.

Period: 1990-2018.

Unity of analysis: artículo de las normas.

Total Records: 1.034.

Author: Daniel Castillo, with the collaboration of the Department of Assembly Technical Services Legislative.

Reformism has substantially expanded the powers of the Judiciary

In the period 1990-2018, the Legislative Assembly enacted 114 new laws that modified the organization, powers or functioning of the Judicial Power (Castillo, 2019; Chapter 4). Of these, just over a third (42) was classified as high-impact legislation, as it had broad effects on the institution (Macaya, 2019).

Among the high-impact laws, the following can be noted include: the Law for the creation of higher courts (1993), the Criminal Procedure Code (1996), the Juvenile Criminal Justice Law (1996), the Notarial Code (1998), the Administrative Litigation Procedure Code (2006), the Law for the Protection of Victims, Witnesses and Other Subjects Involved in the Criminal Proceedings (2009), and the Labor Procedure Reform (2015). The three procedural codes mentioned are presented below and discussed in detail in Chapter 4.

Recent legislation has been less directed to administrative management or judicial governance. Unlike the high-impact laws, reformism in the administrative field was concentrated in the 1990s, without reappearing as a major issue in recent years. The most prominent laws in the administrative area were approved at that time: the Law of Reorganization of the Judicial Power (1997), the Organic Law of the Judicial Power (1993), and the Organic Law of the Public Ministry (1994).

A count of the powers that, as a whole, the new legislation defined the Power, yields a broad and detailed agenda. Indeed, during the 1990-2018 period, Congress added 1,034 new functions to the Judiciary. The database prepared for this Report made it possible to identify that 68.1% of these new competencies are directed to the jurisdictional sphere (chambers, tribunals, and courts) since they refer to procedural reforms, creation of new jurisdictions, or crimes (Castillo, 2019).

If the analysis is carried out by the periodization of "reformist waves" presented in the previous edition of the Report, it is possible to appreciate that the main expansion of functions occurred during the first wave, corresponding to the end and beginning of the century (graph 1.1). However, in the most recent years, reformist activism persisted: in the 2016-2018 period, about 26 new functions were added to the Judicial Branch.

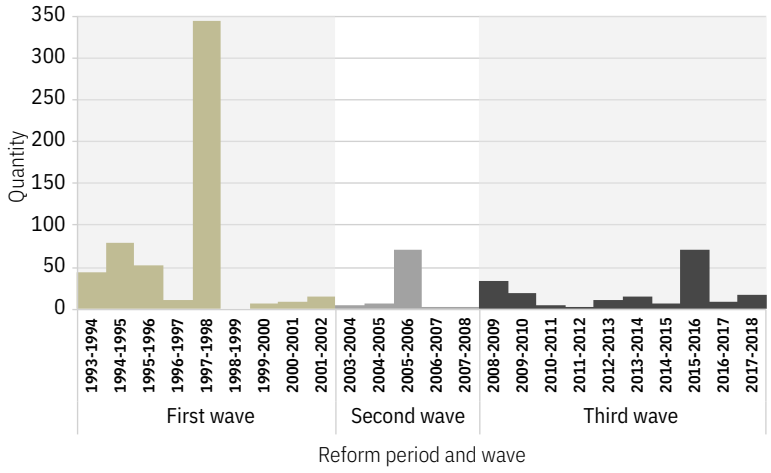
The detailed examination of the reformist legislation of the Judiciary yields a key piece of information: the vast majority of the functions entrusted to the institution come from legislation that does not identify specific resources to be executed (Castillo, 2019). In fact, 34 of the 42 "high impact" laws (81%) did not contain a specific forecast of the additional cost involved in their implementation, either from the identification of new sources of income or from a reallocation budget (figure 1.2). In only two laws did the legislator provide for the creation of a source of income to finance the new functions, and in six additional laws did it carry out a reallocation of budgetary resources to cover them.

These substantive laws without explicit financing are called "democratic promise without support" in the State of the Nation Reports. Essentially, the resources required to implement the reforms have been subsumed within the institutional budget, given that neither the proposing judicial authorities nor the legislator assigned them a specific source of resources.

The participation of the Supreme Court in the approval of the laws that affect the institution has been central. Of the 42 high-impact laws, three-quarters were created, directly or indirectly, by the judicial leadership. Even the eleven initiatives that were not developed in the institution ultimately had to go through the approval of the Court as part of the mandatory consultation that the Legislative Assembly must conduct (Chapter 4).

Figure 1.1

New powers of Judiciary / assigned by law, according to the legislative period and reform wave



a / Jurisdiction is defined as an impact on the powers or obligations of the Judicial Power, included in an article of law. The same article can have several competencies. A total of 834 new competencies approved in the 1993-2018 period are included. The remaining competitions were before these years. Source: Own elaboration with data from Castillo, 2019.

Therefore, the perception that the legislative body is responsible for imposing new powers on the Judiciary in an unconsulted manner is refuted (graph 1.2).

In short, in expanding the democratic promise without budgetary support - a central characteristic of judicial reformism - the Supreme Court has not only been a leading actor but the main one.

It should be remembered that the sources of financing for judicial reforms have been of a different nature. For the execution of the first two reformist waves, there was external financing through two loans from the Inter-American Development Bank (IDB), whose execution ended in 2013. However, the main weight of the cost of implementing the reforms was met through the judicial budget, which grew rapidly until 2017 and allowed the execution and monitoring of modernization processes (figure 1.3).

Indeed, during these first two decades of the century, the Judiciary expanded its institutional, budgetary, organizational, and personnel capacities, as shown by the following indicators (Chapter 5)

- It doubled its staff (from about 6,180 people at the beginning of the century to 12,579 in 2018),
- per capita investment in justice increased fivefold from $ 32.2 in 2000 to $ 168.4 in 2018,
- new jurisdictions were created to deal with matters that previously were not prosecuted,
- and new offices were opened, increasing the number to the current 846, thus becoming one of the public institutions with the greatest capacity for territorial coverage.

Information sources

Reference to the web:
Table of judicial management indicators.

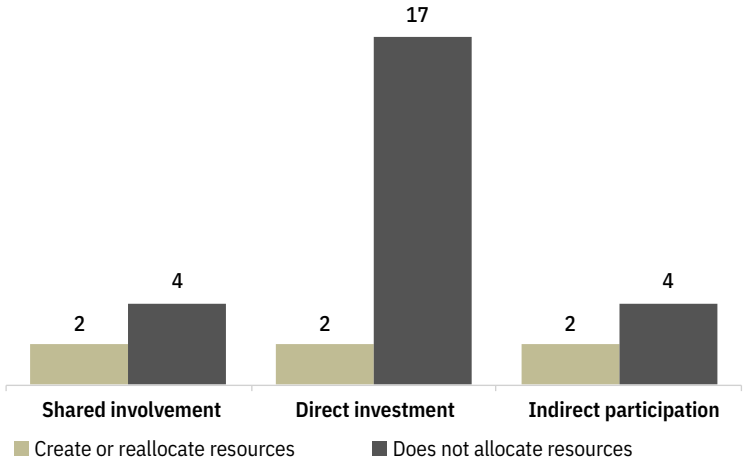
Period: 1990-2018.

Contains: 18 comparable management indicators .

Author: Emilio Solana, with the collaboration of the Planning Department of the Judiciary.

Figure 1.2

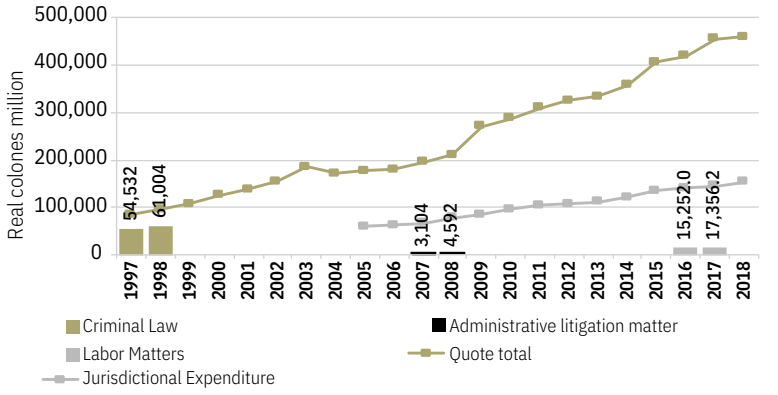
Relevant approved laws[a/] according to the Supreme Court participation allocation of budget content



a / A relevant or high impact law refers to one which created or reformed jurisdictions, or that created more than 10 new legal powers. Here are included 31 high-impact laws in which the Judiciary had some participation; in the remaining 11, there was not a participant during their elaboration process.
b / Direct participation is when the Judiciary lead the process; indirect, when it was invited to contribute or consulted directly; and shared, when the law was generated in an inter-institutional group where the Judiciary was involved.
Source: Own elaboration with data from Macaya, 2019.

Figure 1.3

Evolution of the actual budget approved to Judiciary, expenditure in the jurisdictional sphere and costs in criminal administrative and labor litigation matters at the beginning of the respective reform. 1997-2018
(millions of real colones)[b/]



a / The costs correspond to the first two years of entry into force of the respective procedural reform.
b / Figures deflated with the consumer price index (CPI), base year 2015.
Source: Own elaboration with data from the Judicial Power, various years and Solana, 2019.

This means that, the Judiciary promoted an expansion of its functions, which was approved by the Legislative Assembly without having a clear idea of the budgetary implications of the new mandates. Subsequently, an attempt was made to correct this lack of specification through a strong expansion of the judicial budget. In other words, although the justice system had an increasing amount of resources during this century, it was not clear whether these resources were sufficient to meet the new assigned functions or whether the system was obliged to invest the additional resources it had available in these new tasks.

As of 2018, the situation has changed dramatically. Budgetary growth has stalled, and today the Judiciary has a minimum margin to finance the new tasks entrusted to it. Specific examples of this new restrictive scenario are the following: at the beginning of 2018, it was not able to establish the new jurisdiction specialized in organized crime created by Law 9481 (Macaya, 2019); The Transparency Commission of the Judiciary presented a set of proposals to strengthen anti-corruption areas, for which it requested additional resources in an extraordinary budget that was rejected by the Ministry of Finance, arguing that the institution did not comply with the with expenditure caps; finally, the most recent reforms - such as the Agrarian one, which was approved in 2019 - did not have an additional budget allocation. This fiscal constraint directly limits the approval of new reforms, while making it difficult to implement and monitor those that, although approved, have not been fully implemented.

Case studies reaffirm the magistrate-centric style of reforms

The analysis of the procedural reforms (criminal, administrative and labor litigation) carried out for this Report not only made it possible to identify the central characteristics of the processes through which substantive changes in the organization are approved, but also to understand the functioning of entire areas of the justice system. The three cases were proposed by the Court with similar objectives: to bring the administration of justice closer to the citizenry (there was talk of "humanizing" justice), improve the duration and quality of resolutions, and promote alternative dispute resolution mechanisms. Recently, the Civil (2018) and Agrarian (2019) procedural reforms were also implemented.

The detailed study of the reform processes made it possible to reaffirm that this reformism is promoted "from above", at the top of the institution, and a from a "magistrate-centric" style. In this style, a member of the Court, or a small group of magistrates, assumes a topic and sponsors a specific innovation, without which it would be impossible to start the process of preparation and approval in the Court – which regularly welcomes the initiatives proposed by its members without major changes. During the preparation of the reform, the promoter or promoter shares or minimally coordinates with other agencies or judicial commissions. Precisely because of this disconnection, the institutional conditions required for its implementation are often overlooked, and it is not until the design or even approval that the bureaucratic technical levels are incorporated into the process.

The most recent procedural reforms, such as Labor and Civil, have been prepared taking into account the lessons learned and have tried to overcome the disconnection with technical dependencies through two specific actions: on the one hand, the previous preparation of execution and training plans and, on the other, the preparation of approximate budgets in conjunction with the technical departments. Despite this, the vertical management style "from above" continued to be a given, and, for example, the magistrates and magistrates promoters are personally dedicated to providing training on the new rules. Although this personal impulse is essential in the current model, it has compartmentalized the actions in specific areas, and its positive results do not add value to the development of a shared strategic vision, which changes the outline of the conglomerate as a whole **(Chapter 4).**

The fundamental disconnect between legal modernization efforts and the changes that are required at the institutional management level makes it difficult to implement reforms to its full potential. A clear example of this is the availability of judicial human resources to effect the desired change.

For this Report, a study was carried out on an indicator that measures the availability of personnel to carry out the functions entrusted to the Judiciary: stability in the position. If a large part of the personnel assigned to a work area is working in it, they can be counted on to plan or implement a change in the organization or in the operation of the services. However, if such personnel are highly mobile, efforts to create a new work routine are diluted.

From the analysis conducted, it was found that the turnover of personnel in the Judicial Branch is permanent and very high, which limits any attempts to implement judicial reform. The cases of judicial operators who change their roles and places of work

Information sources

Database of personnel movements of the Judiciary
Period: 2004-2018.

Period: 2004-2018.

Unit of analysis: movements per person.

Total registrations: 489,905.

Author: Ariel Solórzano, 2019, with the collaboration of the Department of Human Management of the Judicial Power

in a matter of days are very frequent. Specifically, half a million personnel movements were registered in the last ten years, considering only the positions of people in the jurisdictional sphere.

Some "peak" months generate up to 5,000 movements per month and coincide with holidays and vacations in the education system (figure 1.4; Chapter 5). Despite its direct effects, high staff turnover has been ignored by reform strategies, which are based on the assumption of stable and specialized staff.

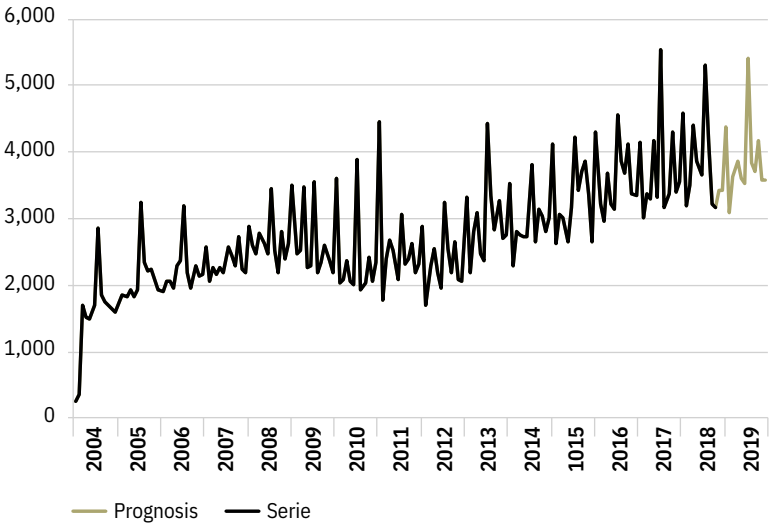
The magistrate-centric style extends beyond procedural reforms; it also applies to the realm of judicial policies, projects, and commissions. In 2018, specifically, there were 41 commissions dependent on the Court and other similar commissions dependent on the Superior Council, which are still in force today (Judicial Power, 2019a).

In a specific area, the prevention of corruption within the judicial conglomerate, this dispersion was also observed (figure 1.5). A systematization of initiatives in this area concluded that the Supreme Court has created or substantially reformed at least fourteen specialized instances and has approved a large number of initiatives aimed at increasing transparency and ethics, in some of which it is an international benchmark., such as the policy of citizen participation or open justice. However, these are efforts that have not been deployed throughout the institution, because they function as archipelagos -led by magistrates- with precarious sustainability depending on the interest of each one meager budgets that limit their results (**Chapter 2**).

Following the same model "from above", The Full Court approved a proposal to implement "certain specific measures in order to modernize the Judicial Power and strengthen the parameters that guarantee its independence and proper functioning.

Figure 1.4

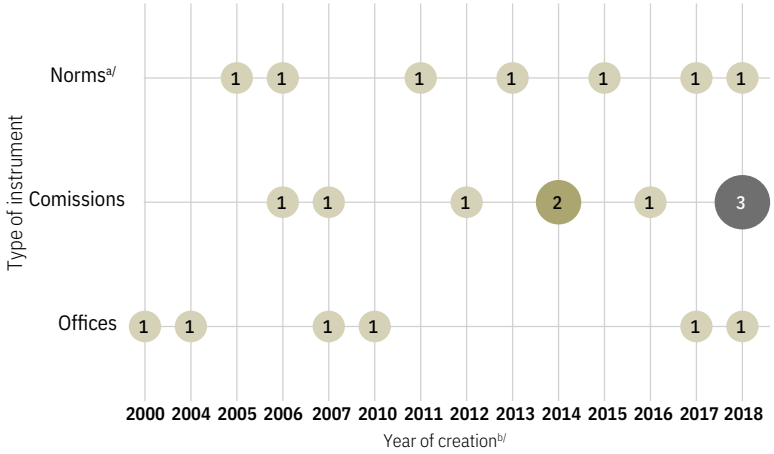
The monthly amount of personnel actions in the jurisdictional[a/] scope



a / Carried out by means of a time series analysis that allows to know patterns of behavior in the long term, measure the effects of some structural change and make projections based on the accumulated knowledge. Source: Solórzano, 2019.

Figure 1.5

Creation of internal control instruments, by type. 2000-2018



a / Refers to instruments or documents approved such as Codes of Ethics, judicial policies, or strategic plans.
b / Years in which no internal control instruments were created are excluded.
Source: Own elaboration based on Saénz and Villarreal, 2019.

These areas became urgent work tables and each one proposed a series of improvements in ten strategic areas (table 1.1); However, the method of discussion and approval of the proposals in the Court has made it logistically and politically difficult to achieve the promised products.

In order to close the process of preparing this Report, and through the information available on the website, a total of thirty Reports were crafted in all the work tables. Twenty-six of the total products promised have been delivered for discussion in Court, and seven have been approved. Among the approved products is the Law for the Fiscal Career of the Public Ministry, which regulates recruitment, selection, and appointment procedures. The document is found on the agenda of the Legislative Assembly.

Second message: The judicial government has been systematically excluded from the reformist impulse

The judicial government is the group of people and entities in charge of the organization, the definition of policies and guidelines and the management of resources of the Judiciary. Article 156 of the Political Constitution assigns this responsibility to the Supreme Court, however; governance is not the exclusive responsibility of the Court, because when it requires legal changes, the body empowered to approve them is the Legislative Assembly. In addition, Congress maintains its power in a key area of judicial governance: the appointment of the members of the Supreme Court .

This Report refers to the areas of judicial government as "reserved domains"[1] which, despite the intense reformism that characterizes the Judiciary, they have survived without any change for decades and have been identified as problematic, both by institutional actors and by society in general. These issues are blocked from substantive reform attempts because decision-makers resist transformative actions that significantly modify the current situation. Some of these areas have diagnoses and proposals, but in other cases it has not even been possible to submit them for discussion.

Table 1.1

Status of the products proposed in each commission of urgent reforms to the Judicial Power

	Products		
Commissions	**Proposed**	**Delivered**	**Earned**
Establishment of the tax career and requirements in the presentation of the annual report of the Attorney General	2	2	1
Reform of the judicial career	3	3	0
Public defense career	2	2	0
Initiation of procedure for a permanent dialogue with civil society	3	3	0
Selection of magistrates with a guarantee of independence and technical and ethical suitability	3	3	0
Performance evaluation	3	3	1
Reform of the disciplinary regime	7	7	3
Conduct protocols for judicial personnel	2	2	2
Comprehensive structural reform plan of the criminal process and fight against Corruption	4	0	0
Plan to for the Full Court to focus on macro aspects of governance and definition of general policies	1	1	0

Source: Own elaboration with data from the Judicial Power, 2020a. Consulted in the month of February.

1 The concept of "reserved domains" was originally proposed by Valenzuela (1990), to refer to political agreements that during transitions to democracy left certain legacies of authoritarian regimes unchanged, including, among other aspects, impunity for those who violated human rights. Similarly, Garretón (1994) refers to "authoritarian enclaves" to name certain thematic nuclei that were not affected by the transitions to democracy, such as, the institutional restrictions present in the Constitution and other regulations, the maintenance of authoritarian nuclei in the army and the problem of human rights violations committed under the military regime.

This edition of the Report focuses on analyzing two "reserved domains" that had been analyzed, in different depth, in previous editions:

- The appointment system of magistrates by the Legislative Assembly. In the episode of political crisis examined at the beginning of the chapter, the effect that the appointments of magistrates can produce on the credibility and functioning of the judicial institution was made evident.

- The concentration of administrative and political management functions in the Supreme Court. This issue has been repeatedly raised as a "bottleneck" for the judicial government, whose effects on the efficiency and effectiveness of the justice system are magnified in times of crisis.

The main conclusion of the studies on both reserved domains is that the political crisis in the judicial government was not intense enough to clear the way for reform in these areas.

Political negotiations unblocked pending court appointments without reforming the magistrate appointment system

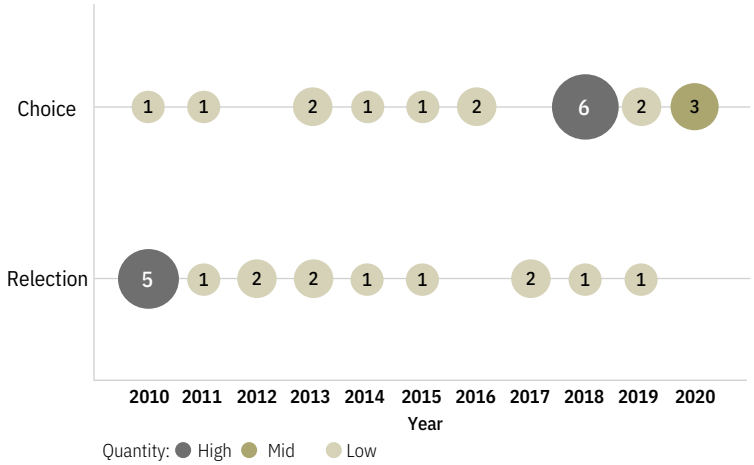
2018 was a critical year for the Supreme Court. Not only was it facing a political crisis, but the vacancies were significantly affecting the operation of this instance and threatening the operation of at least two of its Chambers. In the election of the current president of the Court, 10 substitute magistrates (of the 22 members) participated, due to unappointed positions. That same year, only one proprietary magistrate remained in the Third Chamber, who was also suspended for two months as a result of the "Cementazo" case. In the midst of the questioning for that same case, a magistrate was dismissed and two applied for alimony. One member retired in 2017 and the Assembly had not filled that vacancy in 18 months.

On its part, the Constitutional Chamber had two vacant owner positions due to retirement. Several high-profile votes could not be resolved until their integration was complete with owners. In addition, several Chambers had positions of substitute magistrates open or with a near term of expiration.

The entry into office of a new Legislative Assembly, in 2018, and the critical accumulation of pending appointments unblocked the system for electing magistrates. In the context of a climate of political agreements that prevailed in the Legislative Assembly between 2018 and 2019 (PEN, 2019), the parties finally lifted their reciprocal vetoes and proceeded

Figure 1.6

Number of appointments of magistrates and magistrates in property. 2010-2020[a/]



a / Data available as of February 2020, when pending appointments were completed.
Source: Own elaboration with information from the database of appointment of magistrates of the PEN, 2020.

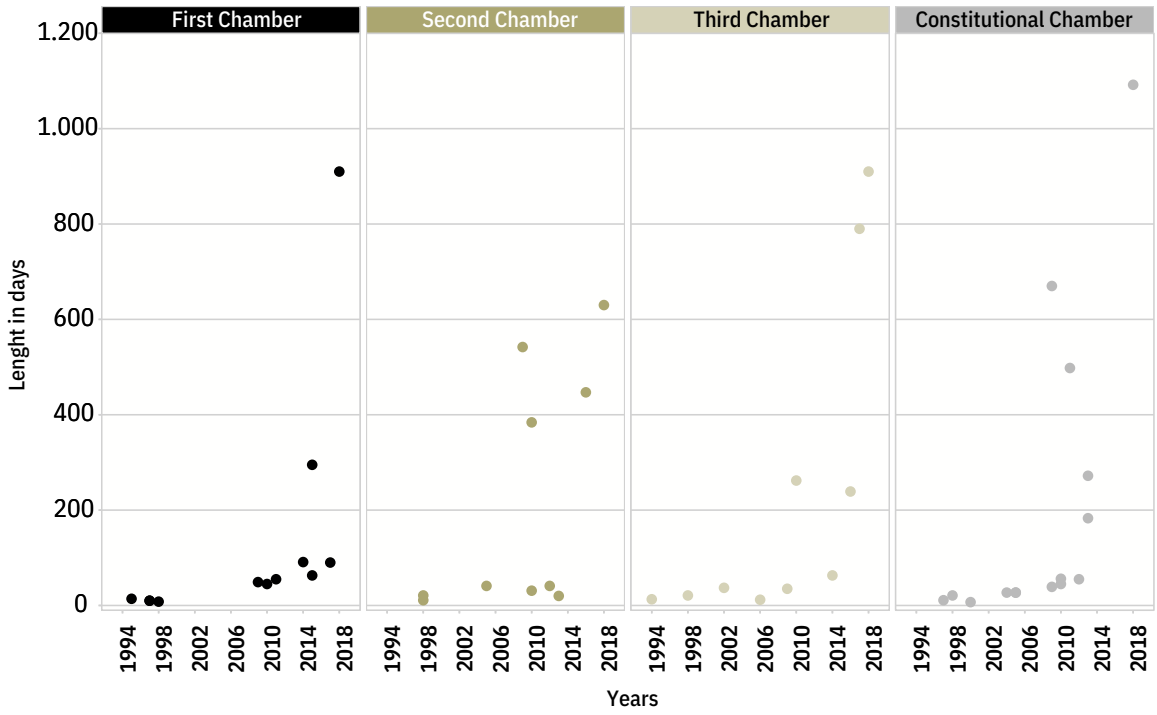
to complete the pending appointments: in 2018, the Legislative Assembly appointed seven magistrates, and between the end of 2019 and the beginning of 2020 it appointed another six (by election or re-election) (Figure 1.6). One hypothesis to be tested is whether the existence of a "package" of appointments allowed a balance in party preferences for certain candidates, in such a way that the main forces managed to obtain, in some cases, their objectives, and also allowed others to achieve theirs.

In the short and medium term this issue will again take on relevance, since twelve proprietary magistrates already meet the requirements to qualify for retirement and a third are close to the expiration of their appointment period, which is why, if they want to be reelected, they must also have the legislative will. For this reason, this Report placed special emphasis on examining the behavior of the Legislative Assembly in ordinary times, based on the fact that the climate of political agreement seen in 2018-2019 was unusual.

The sudden legislative dynamism in the appointment of magistrates did not alter a fundamental fact: the election system was not modified. Thus, legislative votes throughout the selection process, from the assessment in the Permanent Special Appointments Commission (CPEN) and until the final vote in the plenary, remain secret. The plenary can vote for "last minute" candidates not recommended by

Gráfico 1.7

Duration of magistrates appointments, according to chambers. 1994-2018



a / Each point represents a new nomination or re-election process in the Legislative Assembly.
Source: Own elaboration with information from the PEN magistrate database, 2020.

the CPEN; furthermore, the recently included report evaluation methodology used by the CPEN to select a shortlist maintained a strong arbitrary component, by giving 40% to an interview, which is assigned without motivation or substantiation. In summary, it has been found that opacity and lack of accountability on the part of congressmen and their parties prevail when electing magistrates, a situation that makes it impossible to guarantee appointments based on reports and suitability.

From a broader perspective, between 2014 and the beginning of 2020, the Legislative Assembly processed 21 appointments of magistrates (elections and re-elections), approximately a fifth of those made since 1989 (Chapter 7). Without taking into consideration the exceptional diligence shown by the Legislative Assembly in 2019 and 2020, it should be noted that, in the 2014-2018 five-year period, the average time to carry out these appointments had grown more than five times with respect to the period989-2013 (graph 1.7).

This behavior shows that, if the situation is not exceptional, party fragmentation in the legislature is associated with increasing difficulty in appointing magistrates.Thesedilated two dilated deadlines were given despite the fact that Article 163 of the Political Constitution establishes that "the election and replacement of the Magistrates of the Supreme Court will be made within thirty calendar days after the expiration of their respective period or of the date on which it is communicated that the vacancy has occurred" (**Chapter 7**).

A novelty documented in this new edition of the Report is the growing organized citizen activism and greater coverage by the media in the selection processes of magistrates. Between May 2012 and July 2019, eleven bills were presented to modify the procedure for electing magistrates, monitored through independent citizen panels to the Commission Appointments and three were presented with the Constitutional Chamber – on the contests– which were rejected[2].

There have also been multiple proposals prepared by different specialists and organized citizen groups, and

in 2019 a wake-up call was received from the United Nations Special Rapporteur for the Independence of Magistrates and Lawyers **(Chapter 7).** Despite all this, there has been no desire in the Legislative Assembly to approve legal and procedural reforms to bring the country closer to the best international practices.

Not all approaches to reform the system for electing magistrates have, however, been aimed at institutional strengthening. On two occasions the Legislative Assembly tried to remove judges from the Supreme Court, using disagreement with their resolutions as justification, which generated strong reactions from different societal actors. Neither attempt was successful.

At least one of the bills to reform the system (file 20983, admitted for discussion in October 2019) proposes reducing the appointment period to five years and modifying the form of re-election, introducing the requirement of two-thirds of affirmative votes to stay in office for one time only. This contravenes the principles of stability in the office of the judges and judicial independence.

Finally, the Supreme Court has not reviewed the proposals made by the urgent reform working group, which was entrusted with preparing recommendations for the appointment processes of regular and alternate judges. Since 2018, this group delivered a series of products to be discussed by the Court, but there was a divided vote and no agreement was reached. After more than two years of operation, these groups have lost dynamism and only seven of the thirty measures promised by the Supreme Court have been approved (Table 1.1; **Chapter 4**).

The Supreme Court continues to function simultaneously as a board of directors and a collegiate Manager of the Judicial Power

Throughout this century, a second domain reserved for the reformist waves has been that of the judicial government functions in charge of the Supreme Court. In this task, the Court is supported by a series of technical bodies. In addition, it shares responsibility with the auxiliary bodies that have functional autonomy: the Public Ministry, the Public Defense and the Judicial Investigation Agency. All of this configures a vertical hierarchical scheme, in which the Court is directly in charge of many administrative functions, both those of a strategic nature –such as the budget and the definition of institutional policies–, as well as those concerning the micro-administration or routinary administration (figure 1.8).

For this reason, this Report affirms that the Supreme Court, in addition to being the highest jurisdictional body, functions simultaneously as a board of directors -in charge of approving the policies that govern it- and as a collective Manager of the institutional conglomerate, since its members are directly involved in the management of ordinary administrative affairs of the Judicial Power.

In the *Second State of Justice Report,* a chapter was devoted to the issue of the concentration of power in the Supreme Court. Its main findings are reiterated in the follow-up carried out for this edition (Chapter 5). This management model is no longer suited to the needs of a judicial institution that has grown in size and complexity, and prevents improvements in the management of the judicial conglomerate.

According to the literature, this type of institutional architecture limits the effectiveness of internal controls, essential in a democracy, since the dividing line between the organs that preside, execute and evaluate is unclear, which affects the system of checks and balances (Ríos, 2012, Ginsburg and Garoupa. 2009). The concentration of jurisdictional and administrative functions at the apex of the Judiciary has repercussions on external and internal judicial independence. Thus, for example, with regard to the external independence of other extrajudicial powers and groups, having an authoritarian leader makes it easier to control the Judicial Branch, as achieving control of a majority of the leadership will allow him or her to control the entire conglomerate. When the tasks of appointment, disciplinary and resources on individuals accumulate in the Court, it is possible to weaken internal judicial independence, or the possibility that the Judicial operators act without undue pressure or influence beyond the application of the law (United Nations, 1995).

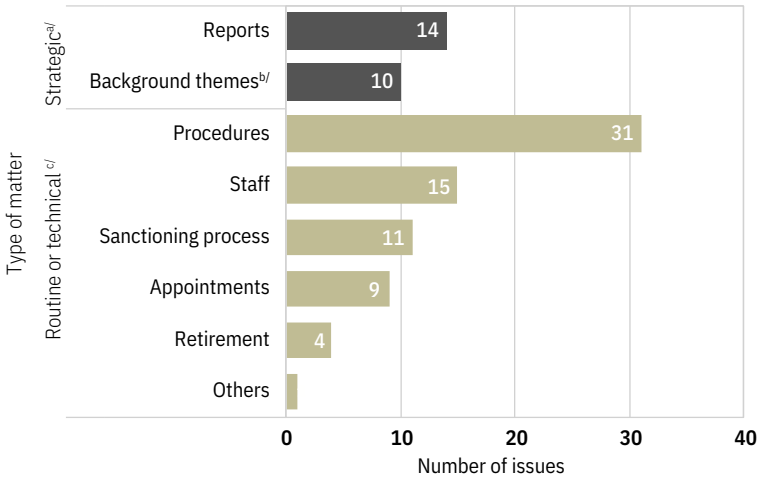
In this initial chapter, two indicators of the concentration of political and administrative functions in the Supreme Court are presented: the issues discussed in the sessions of the Court and, the involvement of the magistrates in charge of executive functions.

In 2018, according to the record made by the Secretariat of the Court based on the public minutes of this body, 95 matters were dealt with in the Court sessions: 71 refer to aspects of administrative management; namely, personnel issues, reports, appointments and retirements, among others (figure 1.8). In most organizational charts of public institutions and private companies, this order of

2 For more details on the merits of the votes, see file 19-016721-0007-CO, Vote 2019-020183 of the Constitutional Chamber.

Figure 1.8

Issues managed by the Full Court, according to category. 2018



a / The strategic issue includes aspects of a macro or substantive nature such as policies, guidelines, regulations, organic reforms, etc.
b / Includes consultations on bills, appeals, actions of unconstitutionality, extraditions, court decisions
c / The routine or technical issue refers to classic daily tasks of active administration such as resource management, purchases, human resources, tenders, disciplinary regime, among others.
Source: Own elaboration with data from the Judicial Power, 2019b.

affairs is assigned to the managerial levels, as a general management or line (specialized) management.

Only slightly more than a tenth of the issues dealt with by the Court were classified as "substantive" related to institutional policies. In summary, the Court is dedicated to dealing with administrative issues inherent to the internal management of the Judiciary andfunctions as a non-specialized collegiate management (the magistrates are judges and, therefore, are not trained in management), an atypical figure in the experience of managing modern organizations.

A second indicator of the concentration of administrative functions is the multiple councils and commissions directed by the magistrates. From the perspective of public administration, they constitute parallel structures that manage resources and provide guidelines, sometimes on central issues for management.

In 2012 there were 31 commissions and in 2016 there were 37, but there was no official exhaustive list, which is why the *State of Justice Report* had to rebuild available administrative records (PEN, 2015).

According to official data , in 2018 there were 41 active commissions directly attached to the Court: 16 that depend on the Superior Council, 17 on the Judiciary Council, and 17 autonomous commissions. The list drawn up by one of the urgent reform groups included 43 inactive commissions, but most have not been formally closed, so that they could be activated in the interest of their members. Although there is no list of the members of each commission, there are cases of magistrates who participate in up to six councils and commissions simultaneously. Said participation becomes complicated when other responsibilities are added to its functions, such as attending to the affairs of the Court one day a week (sometimes they meet twice a week), their own administrative procedures of the Chamber and the jurisdiction to which they belong, representations in events inside and outside the country, and, of course, their fundamental task – because it is the last jurisdictional instance– of issuing a final judgment in the cases.

The Organic Law of the Judicial Power, promulgated in 1993, transferred tasks that the Court previously carried out, to the councils and commissions, an action that was examined in previous editions of the Report. Despite this, it is clear that it did not reduce the administrative power of the magistrature, since it concentrated the leadership of the bodies that it dispersed.

The Court has not presented any initiative for consideration by the Legislative Assembly on these issues. The reform of the organic law of the Judiciary is an old challenge, but today it is presented as one of the most pressing needs of the institution to transform its management and adapt it to the demands of the present.

Third message: The procedural reforms in specific jurisdictions show mixed results, without impacting the macro management indicators of the Judiciary

The results of judicial reformism have not been accurately evaluated, as this task would require a body of evidence that is simply lacking. However, this assessment is extremely important, especially in the context of the fiscal austerity in which the Judiciary currently operates.

This Report made a first step to approach the assessment of the results of the judicial reform through the application of a case study strategy and its contrast with the macro management indicators reported by the Judiciary. Specifically, the issue is approached from three perspectives:

- An inquiry into the specific jurisdictions that have been substantially reformed, in order to verify whether the results obtained are consistent with the expected improvements. To this end, data are presented from the first year of each procedural reform and until 2017, the most recent year available as of 2019.

- An analysis of the response of the Judiciary in cases associated with public corruption, a very sensitive issue for citizens that has been the subject of repeated measures by the Supreme Court as can be seen in figure 1.5.

- An update of the macro indicators available in the Judiciary, to monitor the major trends that have been registered up to 2018. The outdated statistics are counteracted with an analysis of trends that allow for a broader time series and, thus, do not stop at one-time annual changes, which may well be conjunctural, but do not alter the trend.

It is extremely important to remember that from the *First Report State of Justice* It has been emphasized that the complexity of the judicial conglomerate prevents making general evaluations of its performance. This precaution is maintained in this edition, since strengths and weaknesses were again found in various areas of analysis.

Additionally, the need for the Judicial Branch to improve its performance indicators has been emphasized to identify its functions in the most disaggregated manner possible. The incorporation of automated management systems and the closing of the digital divide in the offices seeks to promote a qualitative leap in the statistics available in the future.

Despite an investment in management and information systems, the Judiciary lacks detailed information (microdata) on the response it provides to the public, which in turn allows for evidence-based management .

As it is, indicators that that could not be calculated in 2012 are still unattainable, such as the characteristics of the process by case type, the profile of the users and the disaggregated durations; data that is particularly important to the user. Furthermore, in two years of continuous data collection, it was not possible to update all the monitoring indicators that had been agreed with the Judiciary for this Report.

For now, the available data is handled as "aggregates" of the large flows of cases entered, average durations, completed and circulating, in versions of Excel tables. Although some offices have a greater update and disaggregation of data, either because they have been redesigned with more in-depth reports made on site, or because they have been included in the Project Monitoring and Sustainability Model and have monthly management reports, these usually include a short period of time. In addition, the publication of the statistics is carried out for at least a year and does not include a disaggregation that is essential for monitoring the efficiency of the justice services; for example, a classification of the complexity of the cases attended. All this prevents a systematic analysis of the response given to people.

Recent jurisdictional reforms are not achieving the expected results

This Report analyzed the jurisdictional reforms in three areas (criminal, contentious-administrative and labor), in order to approach a first assessment of their results in terms of improving the speed and efficiency of judicial services. For this, indicators that approximate the performance of the jurisdictions are used: duration of the processes, execution costs and litigation **(chapter 4).**

One of the most recurrent claims of the population regarding the Judiciary is slowness; hence this situation has been one of the changes promised in recent procedural reforms. As an element of context, it should be noted that, in the survey on the perception of public services carried out by the Office of the Comptroller General of the Republic in 2018, 88% of the people surveyed believed that the courts are saturated and 60% expressed that the Judiciary does not guarantee prompt and fulfilled justice (CGR, 2018). Thus, of all the services evaluated in this instrument, the justice services obtained the lowest percentage of positive responses from the citizenry (40%).

Regarding the duration of the processes, with the criminal reform and, specifically, with the deepening of orality in the processes promoted between 2003 and 2005, the growth of the durations was slightly reduced,

Information sources

Web references

Specialized presentations by subject : Aldo Milano, Alfonso Carro y Marco Feoli.

Statistical tables ace of criminal, labor and administrative litigation matters.

Period: from the beginning of each reform until 2017.

Total records: Excel sheet with 81 tables related to comparable indicators related to income, completed, durations and resources in the three subjects.

Author: Solana, 2018.

Despite an investment in management and information systems, the Judiciary lacks detailed information on the response it provides to the public and, therefore, data that allow for evidence-based management.

but after 2010 the indicator resumed its upward trend and, specifically in 2017, it reached a record of 140 weeks on average for the resolution of the first instance in Ordinary Courts. The criminal procedure reform is the one that has more antiquity, having even been the subject of different rounds of administrative and legal changes in the thirty years that have elapsed since the entry into force of the Criminal Procedure Code (approved in 1996, but in force since 1998) (figure 1.9). According to the Planning Office of the Judicial Branch, as of 2018 a redesign was implemented in the organization of some offices, aimed at improving service times. However, it is still premature to confirm whether this progress will be sustainable and whether it will positively impact the trends registered so far in the duration of criminal proceedings.

In contentious-administrative matters, between 2016 and 2018 the average duration of cases in court went from 80 to 76 weeks. In the Tribunals it increased from 47 weeks to 50, and the same in the First Chamber in the same period. Public employment cases have the longest durations. Although these indicators are better than those of the pre-2008 reform era, it is worrying that they are deteriorating in the last stages of the process.

A diagnostic report on the redesign of processes of the Contentious Administrative and Civil Court of Finance identified several bottlenecks, specifically in the steps called "awaiting trial", "awaiting preliminary hearing", "to review and wait for the date of transfer to failure", which have long dead times in the file (Judiciary, 2016). As of the date of publication of this Report, said redesign has been partially implemented.

Regarding the labor procedural reform, given that its validity only began in mid-2017, it is not yet possible to measure the impact it will have on the duration of the cases. In general, the jurisdiction reports a slight improvement from 2016 to 2018. It is expected that the data compiled for this Report can serve as a baseline for year 0 and year 1 of this reform and, based on this, interpret the results in the near future.

It should be noted that in these processes there are different stages and types of cases, which have not increased the durations with the same proportion; hence the importance of having greater disaggregation. In criminal cases, it was found that the preparatory stage, compared to the other stages, shows a greater increase in the term. In the Contentious Court, conciliations were reduced in duration, but sentences and withdrawals, which represent more than 45% of the work flow, did show an upward trend over the last decade. To this must be added, in the cases that go to second instance, the estimated term for the Chambers to be pronounced, which has shown a sustained increase in all cases. **(chapter 4)**.

In summary, the results of the major regulatory reforms in criminal matters (1996), contentious-administrative (2006) and labor (2016) are disparate. Even in areas where improvements have been made, they have been difficult to sustain over time once the initial momentum passes; in fact, the results in the latest available measurement are not systematically better than those at the beginning of each reform (figure 1.9). What the statistics available for the reformed matters do have in common is the trend towards an increase in cost per case, with the exception of administrative litigation, whose trend showed a change in the most recent measurement.

On this issue, it is necessary to raise a final consideration: the reforms implied changes in the organization and work processes of judicial operators, therefore the training of personnel in the new rules was a fundamental component in the implement changes The experiences studied range from a penal reform that did not adequately emphasize the required training and in which the operators were learning on the job, to the most recent reforms that have had a clearer training model. However, institutional expenditures in this area are limited and hardly extend beyond the first year of implementation. According to data from the Judicial School (various years), between 2016 and 2018 the number of personnel covered by training activities decreased, from 4,865 to 2,860 participants. The largest number of people is concentrated in the offer of specialization, updating and judicial technicians. Once the training for labor and civil reforms was completed at the end of that first year –2018–, the offer was reduced and, with it, the population covered **(Chapter 5)**.

Poor results in judicial response to corruption cases

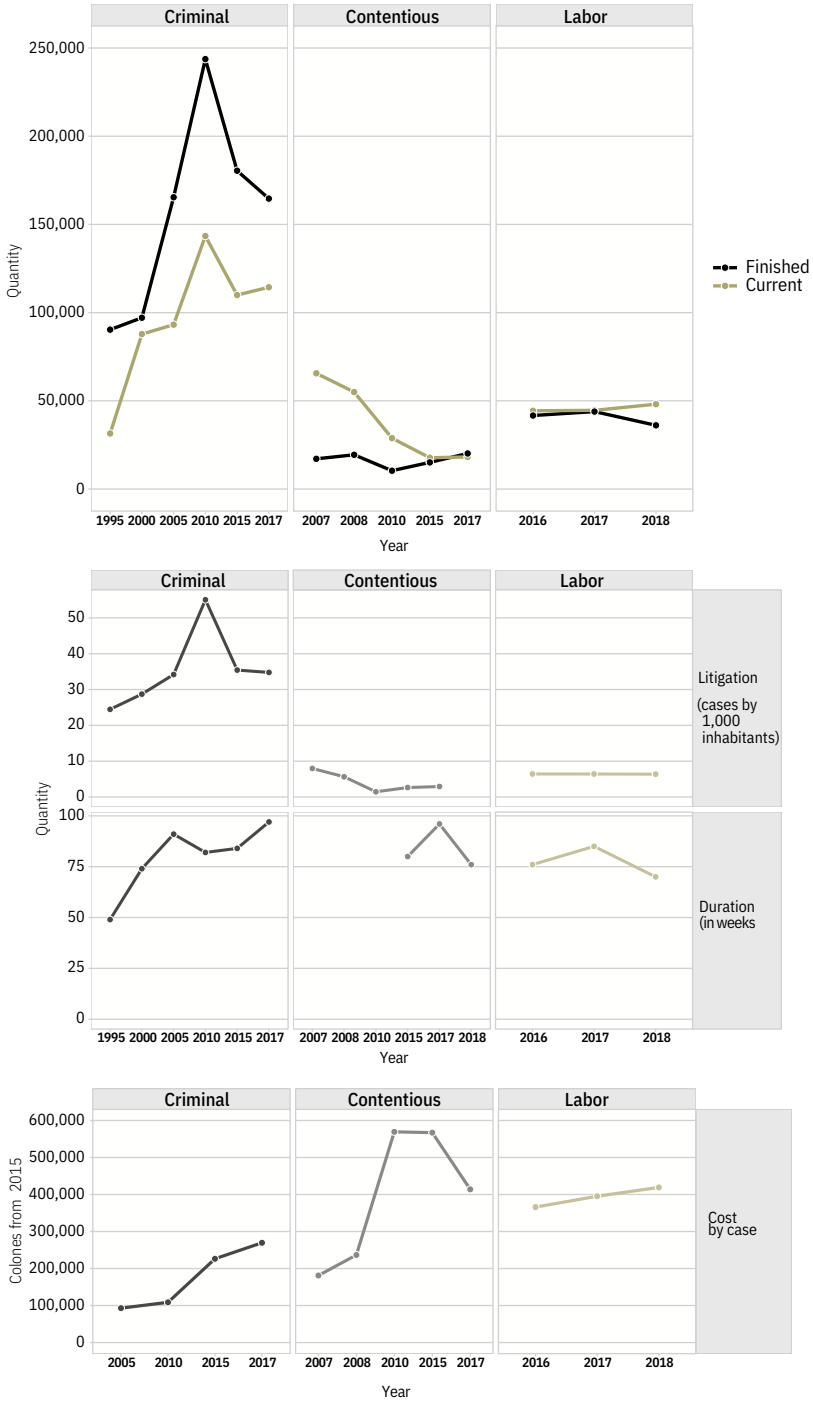
In order to approach the systematic study of the effects of judicial reformism in an area of great sensitivity for citizens, this Report carried out an in-depth study of cases related to alleged crimes of corruption, both in the public administration, in general **(Chapter 3)**, as well as the Judiciary, in particular **(Episode 2)**. Specifically, a census of all the cases terminated in 2017 was carried out (it was not possible, due to limitations in the source of information, to study a longer period) and an analysis of cases of the Court of Judicial Inspection related to misdemeanors. to the duty of probity.

In "external corruption" cases, the type of resolution

is directly related to the duration, since dismissals are the fastest - over 40% take less than 311 calendar days from inception to resolution. On the other hand, in the case of dismissals, more than 70% have durations equal to or greater than 756 calendar days. The cases that prescribe have durations that are between 2 and 4 times longer than those that do not prescribe, which produced that 8% of the cases prescribed, despite the fact that they cover a type of crime in which there are many guarantees to avoid this outcome (**Chapter 3**).

Figure 1.9

Management indicators in the three matters with procedural reforms of the Judicial [a/]



Source: Gómez, 2020, based on Milano, 2019; Feoli, 2019; Car, 2019; and Solana, 2019.

a / The data begins in a pre-reform year, which is taken as the base year, and ends in the most recent year with the information available at the end of the edition. The reform of the Criminal Procedure Code began its implementation in 1998, the Contentious-Administrative Code in 2008 and the Labor Code in 2017. Except for the cost indicator per criminal case that began in 2005, because as of that date the Judicial Power calculates the cost per subject and it is possible to make a comparable indicator.

The complete review of files revealed that in the internal stages of the process there was no procedure whose average duration was less than 170 days; in other words, almost half a year is the minimum time it takes to move the file from one desk to another. In the phases where the most extended periods were found the distribution was determined, in terms of time and duration, from the minimum to the maximum number of days elapsed in each step. For example, from the date of delivery of the OIJ report to the date of transfer from the Public Ministry to the Court, the Prosecutor's Office took 543 days on average to manage the 135 cases that had said report in the file, with a duration maximum ration, in one case, of 3,091 days.

In relation to cases of "internal corruption", the analysis of the Report is focused on the Court of Judicial Inspection (TIJ). It should be noted that information on corruption cases related to judicial personnel is difficult to disaggregate. This means that the statistics management of these bodies cannot generate early warnings and that the respective information is not available in a transparent manner for the citizens or for decision makers within the Judicial Branch.

Specifically, about 549 cases grouped under the heading "misconduct associated with the duty of probity" were reviewed (18 types in total), which were processed between 2017 and April 2019 at the TIJ. 57% of the complaints fall into two broad categories: the unjustified delay of work and the alteration of the normal procedure to favor one of the parties (figure 1.11). However, the sanctions do not correspond to the most frequent complaints, but rather focus on the breach of financial obligations (debts) and the performance of improper activities during periods of incapacity for work.

The visiting mechanism *in situ* , which can be very useful to prevent corruption, is little used because there are only four inspectors assigned, who must attend 846 offices throughout the country. In other bodies such as the Judicial Audit, a low incidence of matters directly associated with internal corruption was found.

In the last two years there has been a strengthening of some of the bodies in charge of handling crimes related to corruption, especially the Anti-Corruption, Probity and Transparency Prosecutor's Office (Fapta), and the very recent creation of a specialized unit in the Judicial Investigation Agency (OIJ). In the Supreme Court, the Transparency Commission and two of the urgent reform working groups proposed a plan of action and changes in the criminal process of corruption crimes and in the disciplinary regime. Given that some of these initiatives are recently implemented or are in the design process, their results must be analyzed in the future. Finally, it must be reiterated that the availability of statistical information by type of case is essential, but it is still pending in the Judiciary.

Macro indicators of the Judiciary show no improvement

In the period analyzed, the macro indicators of the Judiciary did not change long-term trends. Thus, between 2015 and 2018, litigation, the indicator used to measure the institution's workload, the global average duration of cases and the average costs per case terminated continued to increase. On the contrary, there was a decrease in the cases terminated by the judge and the productivity measure. Seen as a whole, the evolution of these global indicators was not, on the balance sheet, favorable in the most recent period or when analyzed in the context of a broader time perspective - from the beginning of this century.

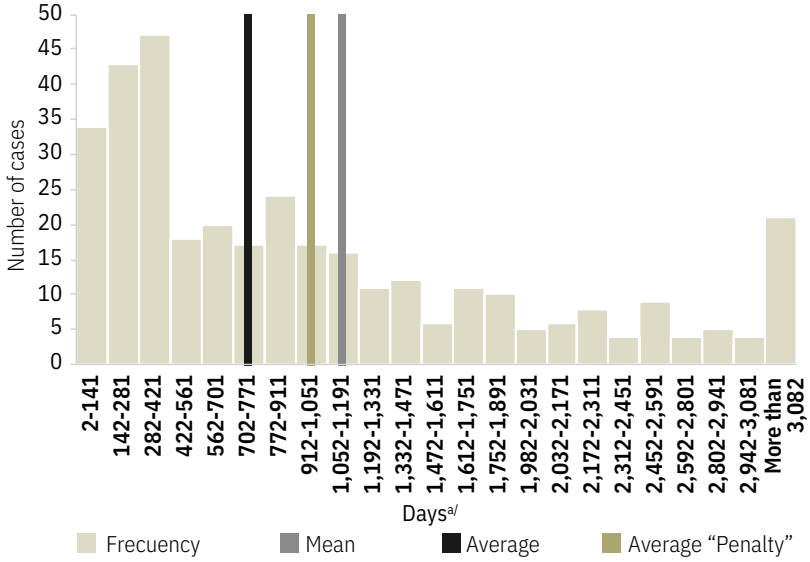
It should be reiterated that these are indicators of very limited utility, due to their level of generality. For example, the average number of cases completed by a judge is a crude measure of productivity, since in addition to avoid delineating the complexity of the processes that each operator processes, it hides the distribution of the durations of the portfolio that it manages. However, it is the only mechanism that the Judiciary has at hand to assess the performance of the institutional conglomerate as a whole. The absence of microdata (records by operator) prevents a technically robust look at this performance.

With this limitation in mind, between 2015 and 2018 average litigation increased again: it increased from 124 to 143 legal cases filed per thousand inhabitants (this indicator was 67 in 1990)[3]. Such growth is explained by a strong increase in the First Judicial Circuit of San José, where the indicator went from 583 to 825 cases entered per thousand inhabitants. Further, the cases terminated in each instance, due to any type of resolution (tax files, dismissals, sentences, among others), increased in absolute terms **(Chapter 6)**.

3 The Planning Office of the Judiciary, for the purposes of preparing this Report, calculated this same indicator using the number of cases entered net and per hundred thousand inhabitants (Judicial Power, 2019c) with data as of December 20, 2019, where an increase is observed from from 12,138 to 13,994. However, in subsequent reviews of the technical team of the PEN and the Judiciary, modifications were generated in the indicator of net cases entered, in addition to maintaining the base of per thousand inhabitants of the historical series, which generates differences with the data here consigned.
In chapter 6 of Third State of Justice, this indicator was calculated taking gross entered cases, due to the difficulty of disaggregating net income by circuit, which generates slight differences in litigation, but with the same trend.

Figure 1.10

Time from beginning to the resolution of the first instance of terminated corruption cases. 2017
(n=352 files)[a/]



a / The vertical line in black corresponds to the median, an indicator that divides the ordered set of data exactly in half. The median value is the point at which half of the observations are above the value and the other half are below the value. The line in "gray" color corresponds to the mean or average obtained by adding all the durations and dividing them by the number of cases. Median duration is below average , which is affected by extreme durations which tend to be low durations. The average of the "Criminal" matter corresponds to ordinary courts (without flagrante delicto), includes preparatory stage and trial stage. Source: Own elaboration based on García, et. al. 2019.

Information Sources

Database of causes before Judicial Inspection Court

Period: 2017-2019.

Analysis unit cases present filed with the Court of Inspection Judicial for breaches of the duty of probity.

Total records: 549.

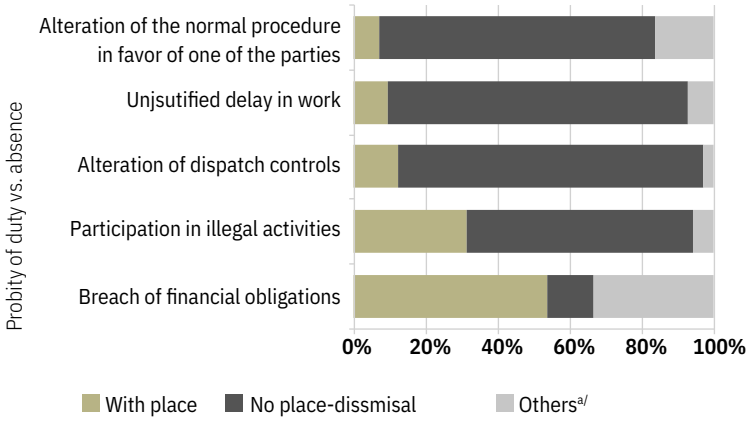
Author: María Fernando Zumbado, With the collaboration of TIJ.

Faced with this growing workload, the Judiciary decided to allocate resources in an increased manner, a measure that did not produce improvements in the overall effectiveness of the jurisdictional function, especially based on the indicators of the cases terminated by the judge. the average durations and the cost per case:

- Cases terminated by a judge have systematically decreased since the beginning of this century: from a total of 595 cases resolved by a judge in 2010, it has decreased to 412 in 2018[4]. If only sentences per judge are counted, the indicator further decreases, going from 182 sentences in 2010 to 156 sentences issued per person. In other words, the increases in absolute numbers in the resolutions passed are

Figure 1.11

Percentage distribution of the type of closure in disciplinary cases involving violations of probity. 2017-April 2019



a / The "Others" category includes cases terminated by declarations of incompetence, filing and outright rejections.
Source: Own elaboration based on the files of the TIJ for the period 2016-April 2019.

4 The indicator only refers to one of the functions, par excellence, of judges, which is to issue decisions.However, it is expected that future indicators can be generated that include other steps taken by the judges, such as administrative matters, intermediate resolutions, steps for investigation, etc., and thus complement this indicator to give a better overview of the jurisdictional function.

explained by the growth in demand and personnel, not by a per capita improvement in productivity[5].

- There was an increase in average durations per case in the last three years in most subjects.

- The cost per global case in the Judiciary increased in the 2015-2018 period, as part of an upward trend that has been taking place since the beginning of the century. A case in 2018-811,676 in real colones from 2015 - cost more than two and a half times more (2.64) than in 2000. However, the cost per case and the behavior varies greatly depending on the subject. In 2017, the cost for cases in the criminal jurisdiction was 269,528 colones, and in administrative litigation it was 413,825 colones. On the other hand, savings in certain subjects have been more than offset by increases in others. In 2018, the real budget of the institution decreased, but the amount subtracted did not affect the cost per case indicator (table 1.2).

If the number of admitted cases increases and the average duration of the proceedings simultaneously increases, an increase in circulating cases is expected, that is, those files that remain open at the end of each year. This performance indicator has different behaviors in the three reformed matters that were analyzed and worsens in the available macro indicators (graphs 1.12). Between 2016 and 2018, the circulating cases of the Judiciary went from 984,871 to 1,252,128 cases, an increase close to 27%. 80% of this growth corresponds to collections (214,718 circulating cases). Seen from a more broad perspective from 1995-2018, cases terminated increased by almost 122%, while circulating cases increased almost three times (285%).

A study by the Planning Office carried out in 2018 attributed the high circulation in collection matters due to the difficulties of notification to the defendants: 8.6% were negative notifications, which is equivalent to 375,529 proceedings; further, the creditor tries to slow down the notification while managing to secure a capital constraint, for which a resolution of the judging person is required and greater congestion is generated (Judiciary, 2020b).

Due to the impact that collection matters have on the global indicators of the Judiciary, it is important to disaggregate the analysis by separating this matter of the rest of the jurisdictions. When taking it into account, the slope of both the current growth and the reduction in terminations is attenuated, but the general trends already reported for the Judicial as a whole do not change.

A special consideration: difficulties in measuring the impact of jurisdictional reforms on global indicators

It is not possible to document the effects of the jurisdictional reforms in criminal, contentious-administrative and labor matters on the global indicators, since the microdata (information on each case) is not available.

In recent years, the average duration indicators by subject do not show significant changes except for family, juvenile penal and notarial , which worsened, or very specific areas, such as criminal courts, that decreased the duration (graph 1.13) (chapter 6). On the other hand, although The performance indicators showed improvement in years immediately following reforms in the investigated areas, the progress was not sustained. In fact, the durations of all subjects tend to grow, although they are still at a better level compared pre-changes.

It can be argued that the effects of the jurisdictional reforms on the institutions macro indicators are limited, because the latter are aggregates from very diverse areas, with contrasting behaviors. Therefore, either they do not impact the statistics due to the low relative weight that they have -the cases of contentious-administrative and labor-, or they are areas characterized by a high volume of cases and with negative behavior (criminal) that does impact the overall figures, reinforcing, in this case, the negative effect of the collection jurisdiction.

Under these conditions, the possibility that macro indicators will change trend is low. Even when specific improvements are shown in some jurisdictions, they deal with progress in certain stages and specific cases. In other words, as long as the jurisdictions with the highest volume of work, such as collection or criminal, show negative indicators, the global trends in the Judiciary will continue on the same path.

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5 This indicator has been criticized for not taking into account multiple contingencies; for example, that many cases "die" before reaching a trial; that there are different complexities involved; that, depending on the subject, multiple actors can influence the possibility of ending a case. These objections being true, it must be emphasized that it is the only possible measure of productivity given the available judicial statistics. On the other hand, a reasonable assumption is that, although the indicator does not accurately measure the level of productivity, it does capture trends. This is because the indicated contingencies were always present throughout the analyzed time series and the jurisdictional reforms that occurred in the period failed to impact the general trends.

Table 1.2

Comparison of management indicators of the Judiciary. 1990-2018

Indicator	1990	2000	2005	2010	2015	2018	Trend
Percentage of expenditure dedicated to personnel payment		85.1	92.4	87.6	88.4	83.4	
Budget per capita (dollars)	15.7	32.2	45.6	98.8	158	168.4	
Real cost per completed case (thousands of colones)[a/]		307.2	334.8	468.7	661.6	811.7	
Net cases of first and only instance by judge	765	844	677	672	529	555	
Active cases of first and only instance		841	663	595	491	412	
Cases of first and only instance being processed by a judge	709	824	622	704	839	973	
Casos en trámite por juez de primera y única instancia			467	566	563	645	
Active cases per 1,000 entries	926	977	920	1,047	1,586	1,754	
Cases in process per 1,000 entries			690	842	1.063	1.163	
Number of sentences of first and only instance per judge		958	298	182	164	156	
Judicial Branch personnel per 100,000 inhabitants	120	160	181	228	246	251	
Judges per 100,000 inhabitants	10	15	19	25	27	28.7	
Prosecutors (rate per 100,000 inhabitants)	2	6	8	11	12	11.7	
Defenders per 100,000 inhabitants	3	5	6	8	10	11.5	
Number of inhabitants per judge	9,965	6,665	5,178	4,085	3,729	3,487	
Litigation	67	105	114	144	124	143	

Note: to / in real colones of 2015.
Source: Own elaboration based on Solana, 2019.

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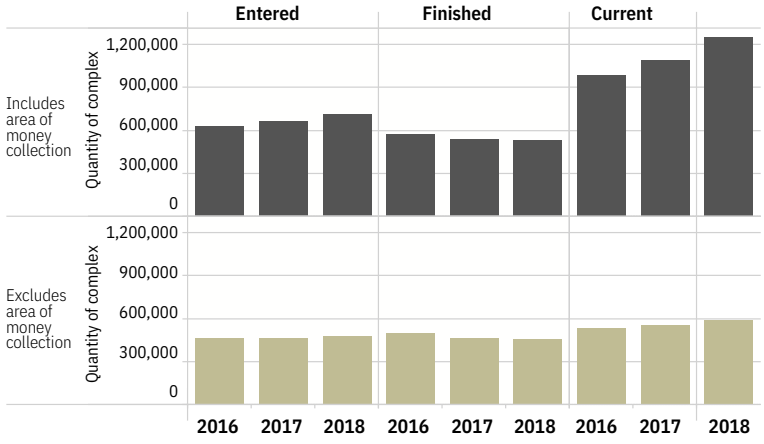
Fourth message: Innovation in the generation and analysis of data can be an effective strategy to improve the performance of the Judiciary

The limitations of judicial statistics are a surmountable barrier. In preparing the successive editions of this Report, the PEN has developed innovative methodologies to broaden and deepen knowledge about the performance of the Judicial Branch through file sampling and generation of its own databases (ex-ante consultations, disciplinary regime).

The Third State of Justice Report used data science techniques that allow demonstration of the potential of academic research in two specific aspects: the production of valuable and pertinent information and knowledge for judicial operators and, the generation

Figure 1.12

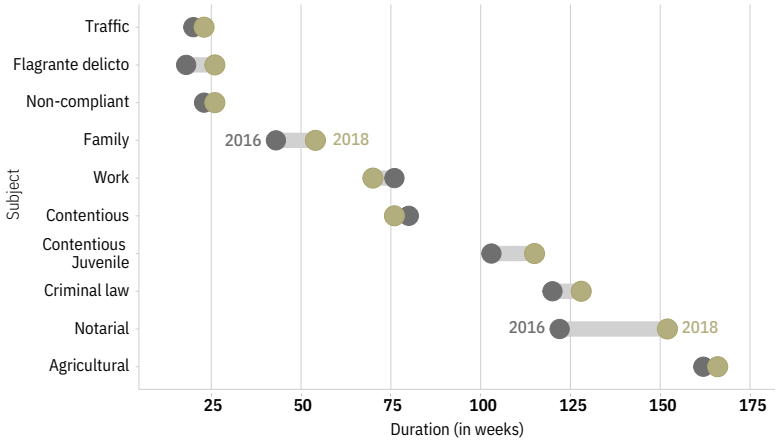
Number of net, net completed, and current cases, including and excluding the matter of collections. 2016-2018



Source: Own elaboration with data from the Judiciary, various years

Figure 1.13

Average duration of cases terminated with judgment, by subject [a/]. 2016 and 2018



a/ The matters of judicial, civil, domestic violence and pensions collection are not considered, since at the time of writing this Report, the respective data was not available. The cases with judgment counted in a uniform way are used for all the subjects in the *Judicial Statistics Yearbook* . By their nature, the matters dealt with in the criminal courts were divided into the categories "flagrante delicto" and "ordinary". In the matter "Work" an average was calculated between ordinary cases of greater and lesser amount for the year 2016, while for the year 2018 the general data is considered, since this division is eliminated as a result of the Labor Procedure Reform. Source: Own elaboration with data from the Judiciary, various years.

of statistical indicators in real time, which, in addition to exceeding the global indicators that the Judiciary produces, could help to resolve bottlenecks in case management.

Due to the automated analysis of 364,032 sentences of the Constitutional Chamber since 1989, it was possible to classify, according to the criteria of the same Chamber, all of their sentences by applying artificial intelligence algorithms (**Chapter 7**). At present, the information systems of the Chamber have only classified the sentences as of 2013, so the exercise creates a public value for judicial officials, trial lawyers and the general public.

The thematic classification of judicial decisions is a constant challenge, given that in many countries the jurisprudence systems present serious weaknesses. The Report faced the challenge of standardizing the glossary of matters dealt with by the Constitutional Chamber that are registered manually and, until recently, without a general list or classification protocol. It was not until 2013 that the Chamber's Juris-prudence Center drew up a manual with 38 unique topics, has since begun to apply, without the possibility of reclassification of the information from the years before this Report.

Under the framework of an agreement between the Judiciary and PEN-Conare, in 2019 the Constitutional Chamber provided the electronic files of all the resolutions issued since its creation (1989) and up through December 2018. To extract the meta-information of each of the sentences, the more than 350,000 files were converted (txt, doc, gift, hmtl, among others) to a single, readable format for computer systems.

In order to achieve a standard classification of the issues, a computational model was developed using neural networks, through which it was possible to classify all the resolutions of the Constitutional Chamber issued since 1989 using the same criteria that its officials applied with sentences from 2013 onwards.

In summary, the computational model "learned" to catalog based on the 38-topic manual that has been in use since 2013. An automatic classifier was created that was applied to all documents since 1989 that made it possible to standardize all the judgments of the Constitutional Chamber and include them in the subject variable (graph 1.14).

These artificial intelligence tools, in addition to being very useful for academic research, can be used to improve institutional management. In the different matters and judicial instances, they can serve to reduce the complexity of some procedures that are currently done "by hand"; for example, the handling of huge

volumes of files and their respective follow-up process. In addition, they can be used as a complement or support to overcome the limitations of the system statistics and evaluation.

Closing

By the closing date of *Third State of the Justice Report* (March 2020), the public scandal that reached the judicial leadership had lost media relevance. However, the other factors that produced the crisis in the judicial government are still present, as well as the consequences of fiscal austerity on the operation of the institution and the divisions among the members of the Supreme Court regarding the judicial reforms. Likewise, structural situations remain in force; namely, the lower public trust regarding the judicial conglomerate and the internal management problems that it carries.

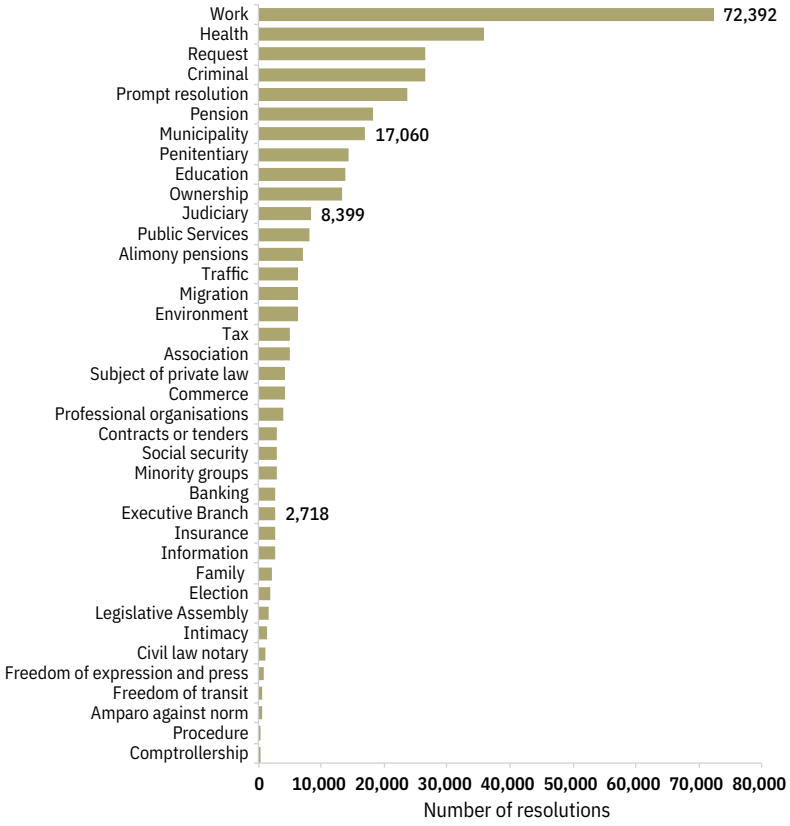
The persistence of most of the factors that produced the political crisis or amplified it, generates, a situation of vulnerability in the justice system that has not yet been resolved. Although the origin of this vulnerability comes from different fronts – not all of which are the exclusive responsibility of the judicial conglomerate–, the current delicate situation reduces the margin of action of the judicial leadership to articulate responses.

It must be recognized that, although in recent years the Judiciary articulated immediate reactions that avoided an even more serious crisis and paved the way for changes demanded and postponed for many years, the outcome of this difficult situation is pending and judicial management weaknesses are especially relevant in current conditions.

In short, the Report documents a delicate period for the Judiciary. The future, to a large extent, depends on the capacity of the institution to adapt to the changing conditions of the environment and to successfully overcome the bottlenecks that prevent it from complying with the constitutional mandate to ensure timely and equal justice. The State of Justice will continue to be vigilant and committed to its work of offering citizens the best and most timely information that allows it to contribute to safeguarding and renewing the democratic Rule of Law.

Figure 1.14

Resolutions of the Constitutional Chamber by subject[a/] supervised exercise in artificial intelligence. 1989-2018



a / These are the topics that were obtained after the automated standardization of the thematic classification with 38 Items defined by the same Constitutional Chamber. Source: Obando, 2019.

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