



*El observatorio
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EPU 2012-2015 REPORT

"The involution of the Venezuelan justice and its loss of identity as a power independent from the State in Venezuela"

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ABSTRACT

In its second report in the EPU process of Venezuela, Access to Justice highlights a steady deterioration of Venezuelan judicial independence as a direct effect of a continuous and systematic plan of the Executive branch, who has been in office for over 16 years.

The problems evinced in the previous period remain and have increasingly worsened as a result of a legal framework subject to the Executive Branch, as well as of a settled case-law of the Constitutional Chamber (SC), supporting the incumbent power and not the citizen, and changing the Constitution and the law at its whim, with arguments such as the following: "... the law is a normative theory put to the service of politics..."¹, "... even in cases in which legal rule poses a solution that does not correspond with the axiological essence of the applicable statutory regime.. the interpretation contrary to the regulatory provision will be correct"².

2011-2015 REPORT

Access to justice is a Venezuelan justice Observatory whose work emphasizes human rights and judicial independence³ <http://www.accesoalajusticia.org/wp/>. It is a non-governmental organization founded in 2010. Its mission is studying and conscientiously monitoring the situation of Justice in Venezuela.

In its previous report⁴ Access to justice showed the systematic policy of attack upon the independence of the judiciary since 1999, when the United Socialist Party of Venezuela (PSUV) took power, and who is still ruling the country. On that occasion, reference was made to the regulatory framework that had just entered into force, and the weakening of the independence of the judiciary, which was made easier through emphasizing the control by the party of Government in the process of appointment and removal of magistrates and judges, as well as by means of the concentration of power

¹Judgment No. 1547 on October 17, 2011, of Leopoldo López
<http://historico.tsj.gob.ve/decisiones/scon/octubre/1547-171011-2011-11-1130.HTML>

² Judgment No. 635 of May 30, 2013, <http://historico.tsj.gob.ve/decisiones/scon/mayo/635-30513-2013-10-0133.HTML>

³ <http://accesoalajusticia.org/wp/>

⁴ Available at: <http://www.accesoalajusticia.org/wp/category/biblioteca/monitoreo-de-gestion-judicial/>

in the Executive with a so-called focus of Social State⁵ to the detriment of other public powers, the rule of law and democracy and in particular of the citizen⁶.

In this second period, the situation has been exacerbated by the radicalization of the model of a so-called Social State, known as "21st century socialism" or "Bolivarian socialism"⁷ which in reality does nothing new but promoting a collectivized society under a political system with a single ideology⁸ and a single power.⁹ In this context,

⁵ Rather Socialist or Communist, totally non-democratic, as evidenced in the "Red Book" of the party of Government, the PSUV, June 2010, ([available at: http://www.psuve.org.ve/wp-content/uploads/2010/06/Libro-Rojo.pdf](http://www.psuve.org.ve/wp-content/uploads/2010/06/Libro-Rojo.pdf)), in that is declared in the page 38: "the Party .." will be supported by the contributions of scientific socialism and the Marxism as the philosophy of praxis, tool for the critical analysis of reality and guide to revolutionary action. *Bolivarian socialism will respond to the creative praxis, to the free exercise of the will and the aspirations of the people of Venezuela*. (highlighted by us).

⁶ It is expressed as the power of "The people" and the Executive power concentrates it from a perspective of a collectivized society, faced with particular interest and individual rights, with the blessing of the Supreme Court of Justice, as demonstrated with his Strategic Plan 2013-2019, in which emphasis was placed in the defense of the interests of the homeland and the collective, and not on the citizen as an individual, in the following terms: "Optimize the conditions for ensuring access to justice and effective judicial protection and due process, for the protection of national, collective interests, as well as raise the dignity and the development of personality in a society democratic, participatory and protagonist.", p. 8. This plan is available at: <http://www.accesoalajusticia.org/wp/infojusticia/plan-estrategico-del-poder-judicial-2013-2019/>

⁷ It's the name of the doctrine of the PSUV, as stated in its aforementioned "Red Book".

⁸ The "Plan de la Patria" (second Socialist Plan of economic and social development of the nation, 2013-2019), inspired "in the Socialist action of the leader and Supreme Commander of the Bolivarian revolution, Hugo Chávez Frias", it is the current Government's plan and establishes that Venezuela must implement the Bolivarian socialism of the 21st century (published in Gaceta official No. 6118 dated December 4, 2013).

⁹ The idea that a single power must rule the country and that there is no separation of powers, was already reported in our previous report to refer to a statement by the President of the TSJ: "Nor can we continue to think in a division of powers because that is a principle that weakens the State (http://www.eluniversal.com/2009/12/05/pol_art_morales:-la-division_1683109.shtml), as well as to a verdict of the Constitutional Chamber, the N ° 1049 of July 23, 2009, (<http://historico.tsj.gob.ve/decisiones/scon/julio/1049-23709-2009-04-2233.HTML>), however, this has been exacerbated during this second period reported. In particular since the Government of Nicolas Maduro, who has ruled virtually through decree-laws by two legislative activations, the first of November 2013 to November 2014 and the second, existing between March and December 2015. I.e. 3 years of his term, more than half has ruled alone, with no legislative power. Add to this that important powers have been given to the President by the Constitutional Chamber by declaring the States of emergency pronounced by the incumbent to be constitutional

Access to Justice will show the dismantling of any judicial independence in Venezuela by the Executive power, and particularly, by the PSUV, as well as their submission to both.

1. REGULATORY FRAMEWORK

1.1. THE LAWS OF "JUSTICE".

The laws referred to in the first report were: the law of the system of Justice (LSJ 2009)¹⁰, the Organic law of the Supreme Court of Justice (LOTSJ 2010)¹¹, the Law of administrative litigation jurisdiction (LJCA 2010¹²) and the code of ethics of the Venezuelan (male and female) judge¹³ (this will be referred to in the following point).

This legislation has the obvious political objective of allowing the interference of the Executive in the Judiciary branch¹⁴. For instance, the law of the system of Justice creates the National Commission for the system of Justice¹⁵ that replaces the Supreme

(<http://www.accesoalajusticia.org/wp/infojusticia/mas-de-un-millon-700-mil-electores-con-derechos-limitados-2>, even against what was decided by the Assembly,

<http://www.accesoalajusticia.org/wp/infojusticia/noticias/la-desintegracion-de-la-constitucion-por-la-sala-constitucional/> and without notifying the international community through the Secretary-General of the United Nations (<http://www.accesoalajusticia.org/wp/infojusticia/noticias/venezuela-en-mora-con-la-onu/>).

¹⁰ Published in Official Gazette No. 39,276 of October 1, 2009.

¹¹ Publicada July 29, 2010 in the Gazette Extraordinary No. 5.991, reprinted by material error on August 9, 2010, in Official Gazette N ° 39.483; and on, turned to print and was released on October 1, 2010 in the Official Gazette N ° 39.522

¹² Published in Official Gazette No. 39.451 dated June 22, 2010.

¹³ Published on August 6, 2009 in the Venezuelan Official Gazette #. 39.236, whose reform was published in Official Gazette No. 39.493 of August 23, 2010.

¹⁴ Report by access to justice submitted in 2011, available at the following link: <http://www.accesoalajusticia.org/wp/category/biblioteca/monitoreo-de-gestion-judicial/>

¹⁵ The National Commission of the system of administration of Justice is made up with all the authorities in the following manner: two deputies, the Attorney General of the Republic, the Ombudsman, the President of the Supreme Court of Justice, the Minister of Interior and justice, the Office of the Attorney-General and a representative of the Popular power. The people's power is controlled by the Executive Branch, so of 8 members, 3 are from the Executive branch. Reference was made to the performance of such Commission by a former magistrate, Eladio Aponte Aponte, who was removed from his post for having links with the alleged drug trafficker Walid Makled, and handed himself over to the DEA. He declared on a television station in Miami that justice in Venezuela is "modeling clay" and it is from the aforesaid Commission, which meets every Friday morning, arise the outlines of how the Judiciary will perform, <http://sumarium.com/vuelve-al-ruedo-el-exmagistrado-fugado-eladio-aponte-aponte/>, judicial power

Tribunal of Justice (TSJ) in the exercise of its powers of Government, administration, established in the Constitution (article 267), since it is now the Commission, who formulates, follows up and executes judicial policies, as well as oversees the management of the TSJ. It is also competent to review and approve its budget and management, all of which obviously limits the functional, administrative and financial autonomy of the TSJ or Supreme Court (article 254 of the Constitution)¹⁶.

1.2. CODE OF ETHICS

The Constitutional Chamber has partially neglected to apply the Code of Ethics of the (male and female) judge twice: first, in 2013¹⁷ of the 2009¹⁸ (renovated in 2010¹⁹), and then in 2016²⁰ the 2015²¹. On both occasions it has excluded from its application the magistrates of the TSJ, thus acting as judge and party, declaring them immovable if they incur in the behavior set forth in this code. Likewise, excluded from its application are provisional judges, who are the vast majority, while it is the TSJ itself who should name them according to the Constitution through public contests (Article 255), contests which have not been held since 2003, because the TSJ²² itself stopped holding them.

In a contradictory manner, the TSJ fails to apply the code of ethics to judges, but intends to: "Contribute to the transformation of the ethics of the Attorney and the

¹⁶ Additionally, this law transforms the communal councils (so called organs of people's power, which are in fact, as already stated, controlled by the Executive Branch), into advisers of the Commission and forces them to intervene in a compulsory way in all the administrative proceedings of the Supreme Court of Justice, even in those that involve the appointment of judges and staff, so that this does not only engage the economic independence of the judiciary, but also the impartiality of judges and judicial officers and establishes an paramount possibility of continuous interference by other organs of the State and of the municipal councils themselves.

¹⁷ Judgment No. 516 of the May 7, 2013, <http://historico.tsj.gob.ve/decisiones/scon/mayo/516-7513-2013-09-1038.HTML>

¹⁸ August 6, 2009 published in Official Gazette No. 39.236.

¹⁹ August 23, 2010 published in Official Gazette No. N ° 39.493

²⁰ Judgment No. 4 of the Constitutional Chamber of the 4th of February, 2016, <http://historico.tsj.gob.ve/decisiones/scon/febrero/184735-06-4216-2016-09-1038.HTML>

²¹ Published in the Official Gazette N ° (extraordinary ediction.) 6.207 December 28, 2015.

²² See report of the Inter-American Commission of *Human Rights of 2009, chapter III, available at this link: <http://www.accesoalajusticia.org/wp/category/biblioteca/monitoreo-de-gestion-judicial/>, in paragraphs 202 to the 218.*

reevaluation of the social function of this profession", as stated in its Strategic Plan 2013-2019²³.

2. JURISPRUDENCE

In the period under review, the jurisprudence of the Constitutional Chamber has endorsed the disincorporation of elected officials by popular vote; It has infringed legal certainty by creating certain legal regulations, which in addition to changing the current law, contradict the Constitution; It has usurped legislative functions and has used the concept of sovereignty to disregard and violate human rights.

2.1 UNCONSTITUTIONAL REMOVAL OF OFFICIALS ELECTED BY POPULAR VOTE

2.1.1 The case of Mrs. Maria Corina Machado.

This MP was elected on September 26, 2010 with more votes than any other Member of Parliament in the country (more than 85%). She belongs to the opposition and acted very vehemently and bluntly to confront the Governments of the PSUV. In view of her strong positions, the President of the National Assembly (AN) threatened to tumble down her immunity and in March 2014, filed an instrument against her at the Attorney General's office²⁴. On 25 March, the majority of the AN²⁵ voted for her dismissal (and by doing so violated the constitutional procedure set forth to tumble down the immunity of a member), for having participated in a meeting of the Permanent Council of the Organization of American States (OAS), invited by the Government of Panama²⁶ to expose events that were taking place in Venezuela from February 2014: i.e.: students' protests and the subsequent Government's uncanny repression²⁷.

²³ Strategic 2013-2019 Plan for the Judiciary in Venezuela, year 2015, p. 12.

²⁴ Latest news on March 18, 2014 press release, Cabello filed an instrument to tumble down Machado's immunity, read more at: <http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/cabello-entrego-documento-para-allanar-inmunidad-a.aspx#ixzz32geQozu6>

²⁵ Represented only by the ruling party for that moment.

²⁶ Press release from El Universal on March 24, 2014: "Cabello- Machado you are not a member any more and you can not go to the National Assembly", <http://www.eluniversal.com/nacional-y-politica/protestas-en-venezuela/140324/cabello-machado-ya-no-es-diputada-y-no-puede-entrar-a-la-asamblea-nacional>

²⁷ See the International Crisis Group newsletter, entitled: Venezuela: point of breakdown, dated May 21, 2014, published in:

The President of the AN's decision was ratified and "legalized" on March 31, 2014 by the Constitutional Chamber *motu proprio* by judgment No. 2072⁸, acting ex officio, after declaring inadmissible an action, instead of ordering to record in the Case File. This is a clear example of how the performance ex officio, is dangerous for judicial independence because it leads to the manipulation of Justice and its consequent politicization.

2.1.2. The mayors **Vicencio Scarano**²⁹ and **Daniel Ceballos**³⁰

The Constitutional Court accused him of contempt as to its orders of constitutional guaranty, two popularly elected mayors, by which it revoked their mandates in an unconstitutional way³¹ and it (the Constitutional Court) sentenced them to imprisonment in spite of the absence of any penalty set forth in the law and without having any jurisdiction to do so³². Both were sentenced, in reality, because they failed to curb the student demonstrations of 2014. Both have been disqualified³³.

The intention was to send a message to the rest of the mayors of the opposition that unless they suppressed students' 2014 demonstrations, they would meet the same fate,

http://www.crisisgroup.org/en/regions/latin-america-caribbean/andes/venezuela/b030-venezuela-tipping-point.aspx?alt_lang=es

²⁸<http://historico.tsj.gob.ve/decisiones/scon/marzo/162546-207-31314-2014-14-0286.HTML>

²⁹ To learn more about the Scarano case: <http://www.accesoalajusticia.org/wp/cronologia-caso-enzo-scarano/>

³⁰To learn more about the **Ceballos**:<http://www.accesoalajusticia.org/wp/cronologia-daniel-ceballos/case>

³¹ Judgment No. 245. Date: 9 April 2014, available at:

<http://historico.tsj.gob.ve/decisiones/scon/abril/162860-245-9414-2014-14-0205.HTML> and # 263 on April 10, 2014, <http://historico.tsj.gob.ve/decisiones/scon/abril/162992-263-10414-2014-14-0194.HTML>

³² Thus violating this principle: "*nullum crimen sine lege*", no penalty without law. *i.e., there can be no crime or punishment without previous law.*

³³ **Scarano** has already served his sentence, but the ruling party attempted to charge him with new crimes, including under a military court, and finally, he has even been disqualified for public office. **Ceballos** has also been disqualified and is in prison, by a measure to precautionary measures for eventual new crimes, however, he is serving his sentence at home for health reasons. Further details on these cases can be seen here: <http://www.accesoalajusticia.org/wp/infojusticia/casos-emblematicos/presos-politicos/presos-politicos/>

while according to the law, the suppression of disturbances is it comprised in the jurisdiction of central power, and is not local police that is ruled by Mayors.³⁴.

Ceballos has continued to be pursued and therefore, has been the subject of important international decisions that Government has not listened to³⁵.

2.2. LEGAL SECURITY, SEPARATION OF POWERS AND POPULAR WILL

The Constitutional Chamber has changed the Constitution on an ongoing basis, becoming a kind of constituent power³⁶, and has usurped the functions of the National Assembly. The Electoral Chamber has also rendered decisions that violate the people's sovereignty. The most relevant sentences in this sense have been:

2.2.1. January and March 2013³⁷ were closely linked to the health and subsequent death of President Chavez, who by, seemingly ignoring the reality of his absence from power by serious illness, led the country to a scenario favoring the interests of the ruling party, that resulted in the election of current President, Maduro.

2.2.2. No. 1864 of December 22, 2014³⁸, allowing (through Chavez' dubious mysterious letters) the designation of the authorities of citizen branch (Attorney General, Comptroller and Ombudsman) according to the interests of the PSUV, half-

³⁴ Article 53 of the organic law of the police and the Bolivarian national police service. Vid http://www.mp.gob.ve/c/document_library/get_file?p_l_id=29594&folderId=14478&name=DLFE-3424.pdf

³⁵ See The Supreme Court of Justice of Chile by way of "universal jurisdiction," spoke on the 18th of December, 2015 and again on December 29, requesting the International Human Rights Commission to visit Venezuela to see the conditions in which that judgment has been pronounced (<http://www.accesoalajusticia.org/wp/infojusticia/noticias/proteccion-universal-decretada-para-leopoldo-lopez-y-daniel-ceballos/>). In this regard, the Supreme Court of Justice issued a statement, indicating that it does not accept interference by foreign Governments by virtue of Venezuelan sovereignty (<http://www.tsj.gob.ve/es/-/poder-judicial-venezolano-condena-nueva-decision-injerencista-de-la-corte-suprema-de-chile>).

³⁶ Its main means has been the remedy of constitutional interpretation, which was an invention of the Constitutional Chamber through sentence N° 1077 dated September 22, 2000, from which the Chamber has become a sort of self appointed "perpetual constituent", <http://historico.tsj.gob.ve/decisiones/scon/septiembre/1077-220900-00-1289.HTM>

³⁷ Respectively, <http://historico.tsj.gob.ve/decisiones/scon/enero/02-9113-2013-12-1358.HTML> and <http://historico.tsj.gob.ve/decisiones/scon/marzo/141-8313-2013-13-0196.HTML>

³⁸ <http://historico.tsj.gob.ve/decisiones/scon/diciembre/173494-1864-221214-2014-14-1341.HTML>

friendly vote plus one of the members present at the parliamentary meeting³⁹ for that moment, representing the party of Government., and not the vote of 2/3 parts as required by article 279 <http://historico.tsj.gob.ve/decisiones/scon/diciembre/173494-1864-221214-2014-14-1341.HTML> constitutional⁴⁰. With judgment No. 1865 of December 26, the Constitutional Chamber went beyond, because it itself appointed the Rectors of the National Electoral Council, usurping once more the functions of the National Assembly, under the justification of an alleged omission, denounced by its president, when Article 296 expressly refers to the 2/3 required parts⁴¹

2.2.4. N ° 1.758 of December 22, 2015, in which it “construed” that the former National Assembly⁴² was not "constitutionally barred to convene extraordinary sessions after the second ordinary session of the final year of their respective constitutional cycle", which allowed the said Assembly to perform several extraordinary day sessions and among others, to appoint 13 judges of the TSJ, of course “blatantly partisans” of the government⁴³ in violation of the rules and regulations governing these proceedings⁴⁴ without legal power to do so, in pursuance with the law, because it was a nomination to be performed by the new Assembly, which would have been operational in 2016, and the departing Assembly did it to prevent the new Assembly which is mostly comprised by opposition members⁴⁵

2.2.5. the No. 260 decision by the Electoral Chamber of December 30, 2015⁴⁶ which suspended members of the Amazonas State based on insufficient and unconstitutional evidence, leaving the new National Assembly, elected on December 6, with a dubious supermajority and a whole state without any representation⁴⁷ made worse by being a State with indigenous population which also infringes the right of native peoples to have a political representation (article 125 of the) Constitution).

⁴¹<http://historico.tsj.gob.ve/decisiones/scon/diciembre/173497-1865-261214-2014-14-1343.HTML>

⁴² obviously mostly made up by the ruling party.

⁴³<https://supremainjusticia.org/2016/02/15/seis-militantes-del-chavismo-dominan-las-salas-del-tsj-que-atacan-a-la-asamblea/>

⁴⁴<http://historico.tsj.gob.ve/decisiones/scon/diciembre/18420-1758-221215-2015-2015-1415.HTML>

⁴⁵The New National Assembly was chosen by an overwhelming majority of the Venezuelan citizen on the 6th day of December, 2015, and since then, the Supreme Court of Justice does not let it operate by the interposition of motions by the Government with rulling against; 1 The Tsj has suspended members of a State of the country, which has been put into doubt its super majority of 2/3 parts (see comments to the judgments of the TSJ on this subject at:

<http://www.accesoalajusticia.org/wp/infojusticia/noticias/la-justicia-a-la-carta-de-la-sala-electoral/> and

<http://www.accesoalajusticia.org/wp/infojusticia/noticias/por-que-la-sala-electoral-del-tsj-viola-la-constitucion/>); 2. It has stripped the AN of its legislative powers in economic matters and has allowed the President of the Republic to declare the State of emergency throughout the country by decree, although the legislation and including the Constitution bans it expressly

(<http://www.accesoalajusticia.org/wp/infojusticia/noticias/la-desintegracion-de-la-constitucion-por-la-sala-constitucional/> and <http://www.accesoalajusticia.org/wp/infojusticia/noticias/lucha-de-poderes-golpe-de-estado-judicial/>); and has diminished the role of Comptroller of the National Assembly, saying that he cannot exercise it with respect to any public authority, except for the Executive Branch, although under certain conditions and not in relation to the Army

2.1. RCTV AND THE SOVEREIGNTY CASE

The Constitutional Chamber declared unenforceable the ruling of the Inter-American Court of Human Rights ordering the restitution of RCTV concession and the payment of a compensation⁴⁸. In its decision, the Chamber entered into contradictions which demonstrate its lack of impartiality⁴⁹ when it comes to international decisions that affected acts of the Executive Branch, and it has widely used the idea of sovereignty⁵⁰ of the Venezuelan State, understood as the principle of self-determination of peoples, and not as the manifestation of the will of the people. This how the Chamber intends to elude the responsibility it has to abide by the rulings of international bodies by express mandate of the Constitution (articles 23 and 31)⁵¹.

3. BIASED JUDICIAL MANAGEMENT, WITHOUT ACCOUNTABILITY OR SYSTEMATIZED INFORMATION

The TSJ has failed to submit its annual report since 2012. Therefore, there have been practically no statistics as to the Judiciary for the last 4 years: There is only the scant information provided in the opening of the judicial year opening speeches⁵².

([http://www.accesoalajusticia.org/wp/infojusticia/noticias/sala-constitucional-sigue-desconociendo-a-la-Asamblea Nacional](http://www.accesoalajusticia.org/wp/infojusticia/noticias/sala-constitucional-sigue-desconociendo-a-la-Asamblea-Nacional). Access to justice considers it a "**Judicial coup**".

⁴⁶Available at:<http://historico.tsj.gob.ve/decisiones/jisselec/diciembre/184244-1383-301215-2015>. It should be noted that the Electoral Chamber went as far as to open the Electoral Chamber, which was closed because of a judiciary holiday, only to receive the Government's motion and pronounce the appropriate judgment without giving the affected members any chance to see their File. <http://www.accesoalajusticia.org/wp/infojusticia/la-justicia-a-la-carta-de-la-sala-electoral/>

⁴⁷ For further information, see the opinion of access to justice

<http://www.accesoalajusticia.org/wp/infojusticia/noticias/la-justicia-a-la-carta-de-la-sala-electoral/>,

<http://www.accesoalajusticia.org/wp/multimedia/4-evidencias-del-error-judicial-de-la-sala-electoral/>;

<http://www.accesoalajusticia.org/wp/infojusticia/noticias/sala-electoral-dicto-sentencia-en-materia-que-no-le-corresponde/>

⁴⁸ Sentencia No.1.175 del 10 de septiembre de 2015

<http://historico.tsj.gob.ve/decisiones/scon/septiembre/181181-1175-10915-2015-15-0992-HTLM>: If you want to know the contradictions of the judgment you can access the link:

<http://accesoalajusticia.org/WP/infojusticia/noticias/las-contradiciones-del-tribunal-supremo-de-justicia-en-el-cso.rtcv/>

⁴⁹.It must be remembered that the constitutional role and the function of the Constitutional Chamber is to guarantee the respect for the totality of the citizen of the national even though the government be involved, it is the guarantor of the fundamental rights compliance.

On the subject of planning, there is the Strategic 2013-2019 Plan, published recently (2015) by the TSJ, which evidenced the bias with which the Judiciary is struck as it will be seen below.

3.1. THE BIAS OF THE STRATEGIC PLAN OF THE JUDICIARY

The "Bolivarian" socialism of the 21st century⁵³ and the Plan of the homeland⁵⁴ are the references for the planning of the judiciary in Venezuela, as set forth in its Strategic Plan⁵⁵ and the President of the TSJ said in his speech opening of the judicial year of 2014: "... actions... developed by the judiciary...serve as a basis to the aims and objectives proposed in the framework of the Plan of Homeland 2013-2019"⁵⁶.

Additionally, the Strategic Plan does not provide judicial independence as one of its fundamental ideas⁵⁷, but while emphasizing the Bolivarian doctrine and national sovereignty⁵⁸ the TSJ has proposed popular control instances⁵⁹, the "obedience of the judiciary to sovereignty"⁶⁰, and the "power of obedience in the judicial management"⁶¹

3.2. SELECTION AND STABILITY OF JUSTICES AND JUDGES

The Constitution establishes that the magistrates of the TSJ will last 12 years in office. But only 11% of the nominees since 1999, has completed the constitutional period, the average has been of only 7 years in office⁶²... This indicates a high turnover of judges, contrary to stability they should have. This has to do with the interference by the ruling party (PSUV) to achieve early retirement and to ensure faithful judges⁶³

It should be noted that all appointments of judges since the year 2000 have been made in a manner contrary to the Constitution⁶⁴, but the most shameless violation was

⁵⁰ the word **sovereignty** appears **35 times in the Constitutional Chamber's decision**. This is no coincidence since the Chamber used it extensively in prior decisions where it highlighted the importance of sovereignty because of the TSJ's constitutional role to watch over it.

⁵¹ Then we should not be amazed that on April 10, 2012, the Venezuelan Government gave notice of termination to the American Convention of Human Rights with the terrible consequence for Venezuelan people that, from September 10, 2013, cannot resort to the American Court to defend their rights. The RTCV was being dealt with before such termination; that is why it was applicable to Venezuela, but it was the last.

⁵² See report on the performance of the judiciary (2000-2015), available at this link:
<http://www.accesoalajusticia.org/wp/infojusticia/informe-sobre-el-desempeno-del-poder-judicial-2000-2015/>

the last, at the end of 2015, which violated the Venezuelan legal system, as well as the principles and international standards of judicial independence, separation of powers and democracy.⁶⁵

The Commission, which made the appointment, was largely composed of representatives of the ruling party, and none of them was an independent civil society representative as required by the Constitution⁶⁶. The selection process started without making clear how many judges were to retire, approximately one week after its opening, out of the blue there appeared 13 early retired justices and then suddenly the Commission suspended the process without any justification⁶⁷

After holding parliamentary elections, the AN President promised to the President of the Republic having judges appointed prior to December 23, 2015⁶⁸. Despite being impossible without meeting the time periods and legal requirements, in fact, it was up to the new AN opposition majority designate them, but the outgoing did as promised by its President, violating all the laws.⁶⁹

⁵³ It is the PSUV ideology. The PSUV is the Government party as explained before..

⁵⁴ It is the Government party as stated hereinbefore..

⁵⁵ *“Tackling the ethic and institutional commitment to generate the conditions necessary to the transformation of the Judiciary it is unavoidable to draw the guidelines to trace the course we have to take pursuant to the constitutional principles and the five historical objectives stated in the Homeland Plan (2013 – 2019) that will lead the socio-economic development of our country for the next six (6) years, as national regulations in planning published in the Venezuela Official Gazette N°6.118 Extraordinary Edition of December 4, 2013...”*

⁵⁶ tv interview, available at: <http://globovision.com/articulo/gladys-gutierrez-el-tsj-actua-con-independencia-y-sin-sesgo-politico>. In respect to the Homeland Plan, we must clarify that it is the Government Plan corresponding to, a political and ideological vision in accordance with the Bolivarian Socialism of the 21st Century. It is obvious that. This Plan transforms the Judiciary into a political tool by distorting its essential role in the framework of a Constitutional nation, thus infringing, among others, article 256 of the Venezuelan Constitution, in fact, article 256 sets up that political activism is totally forbidden to magistrates and judges.

⁵⁷ The plan's main points are: Social Justice –with a brief reference to independence-, social involvement as an expression of the people's sovereignty, participating planning, effectiveness and efficiency, Strategic Plan, p. 6 of the Plan.

⁵⁸ *“Strengthen the jurisprudential development of the Bolivarian doctrine, and the social justice pattern enforcing the national sovereignty and the guarantee of the social, economic and cultural rights, balancing them with the individual, civil and political rights, framing them with the fair distribution of wealth and the supreme happiness of the people”*, Judiciary Power 2013-2019 Strategic Plan p. 13.

⁵⁹ We should remember that 21st Bolivarian Socialism does not establish them as mechanisms of citizen participation, but as Government operators

⁶⁰ In regard to this matter: **“Create a special court of justice empowered to control, follow up, and permanently evaluating the performance and operation of the Judiciary where that popular power will become directly involved”**

⁶¹ Strategic Plan, p.20 The highlight is ours.

With this unconstitutional and illegal appointment of judges, the ruling party elected 13 new main judges and 21 alternates for another 12 years. To this must be added 13 outgoing judges and many of their deputies are retired prematurely, without making it clear why, although there is a complaint from a retired judge who claimed that retirements were not voluntary but forced⁷⁰.

If the magistrates of the TSJ since 2000, and in particular, since 2004 have been appointed for political reasons⁷¹. It is clear that the judges, appointed by the TSJ cannot have been properly appointed. Opposition contests have not been held since 2003⁷² For this reason, the number of irregular (without tenure) judges (but provisional and temporary) is very high. At this time is 69% according to the information contained on the web site of the TSJ⁷³. They are appointed and removed through a simple communication without prior procedure.

Hence their huge turnover and stability, as well as the dubious permanence of those named by opposition competition until 2003, because each year approximately, as shown in the opening of the judicial year speeches, around 1500 judges are named in Venezuela per year in total from 2000 up to now, approximately between 1500 and 2200 judges⁷⁴. Not strange in that sense is their low efficiency, which is denoted, for example, with the fact that less than 25% of their sentences is final⁷⁵.

⁶² ¿How long does a TSJ justice stay? Available in: <http://www.accesoalajusticia.org/wp/biblioteca/monitoreo-de-gestion-judicial/estudio-de-acceso-a-la-justicia-sobre-el-tiempo-de-duracion-de-los-magistrados-del-tsj/>

⁶³ An example of it is the sudden retirement of 13 magistrates in 2015 that according to the denunciation of one of them was forced. See at <http://www.eluniversal.com/nacional-y-politica/1602217/magistrada-jubilada-denuncio-en-la-an-que-fue-presionada-para-retirarse>

⁶⁴ See report by the Interamerican Commission for Human Rights of 2009, point 192 to 202, available at <http://www.accesoalajusticia.org/wp/category/biblioteca/monitoreo-de-gestion-judicial/>

⁶⁵<http://www.accesoalajusticia.org/wp/infojusticia/noticias/designacion-de-nuevos-magistrados-viola-todo-el-ordenamiento-juridico/> y <http://www.accesoalajusticia.org/wp/infojusticia/noticias/informe-sobre-irregularidades-en-la-designacion-de-magistrados/>

⁶⁶<http://www.accesoalajusticia.org/wp/infojusticia/noticias/el-comite-de-postulaciones-judiciales-y-su-desfiguracion/> y <http://www.accesoalajusticia.org/wp/infojusticia/noticias/el-comite-de-postulaciones-judiciales-y-su-continua-desfiguracion/>

⁶⁷<http://www.accesoalajusticia.org/wp/infojusticia/noticias/las-3c-que-le-faltan-al-comite-de-postulaciones-judiciales/>

⁶⁸<https://www.lapatilla.com/site/2015/12/08/cabello-le-informa-a-maduro-que-nombraran-magistrados-del-tsj-antes-de-entregar-la-an/> y <http://www.accesoalajusticia.org/wp/infojusticia/noticias/asamblea-saliente-sin-tiempo-para-nombrar-magistrados-2/>

4. RECOMMENDATIONS

Venezuelan justice situation has deteriorated to such an extent that judicial independence is not only no strategic axis, but changed into subjection to the plan of the Government, and especially of the party, that has been ruling Venezuela for more than 16 years. In this context, the recommendations made by the participating States of the first EPU process have not been complied⁷⁶, by which access to justice reiterates below its previous report⁷⁷ (e) indicates, in addition to this second period.

⁶⁹<http://www.accesoalajusticia.org/wp/infojusticia/noticias/designacion-de-nuevos-magistrados-viola-todo-el-ordenamiento-juridico/>

⁷⁰<http://www.eluniversal.com/nacional-y-politica/160217/magistrada-jubilada-denuncio-en-la-an-que-fue-presionada-para-retirarse>.

⁷¹ See: Report of the Human Rights Interamerican Commission of 2009, points 197 a 201, available at <http://www.accesoalajusticia.org/wp/category/biblioteca/monitoreo-de-gestion-judicial/>

⁷² Since 1999 the judges' stability was struck out with the terrible consequence that judges became no longer regular judges but lost their tenure in a court. The Supreme Court of Justice or TSJ is the appropriate body to name and swear them. Between 2000 and 2003, the TSJ held the regular public contests set forth in the Constitution to name them and managed to have 20% of regularly entitled judges. However, subsequently, since in spite a proposal dated September 28, 2005 and later a plan to regulate them, public contests were not held any more.

⁷³ Number of courts of justice and judges in Venezuela available at:

<http://www.accesoalajusticia.org/wp/biblioteca/monitoreo-de-gestion-judicial/levantamiento-del-numero-de-tribunales-y-jueces-que-hay-en-venezuela/>

See: the Report of the Interamerican Commission of Human Rights until 2009, available at: <http://www.accesoalajusticia.org/wp/category/biblioteca/monitoreo-de-gestion-judicial/> and after: <http://www.accesoalajusticia.org/wp/biblioteca/monitoreo-de-gestion-judicial/levantamiento-del-numero-de-tribunales-y-jueces-que-hay-en-venezuela/>

⁷⁵<http://www.accesoalajusticia.org/wp/infojusticia/informe-sobre-el-desempeno-del-poder-judicial-2000-2015/>

⁷⁶In 2011, as product of the first EPU process, Germany, Switzerland, the United States of America, Australia, France, Eslovaquia e Israel, sent recommendations to Venezuela as regard to Justice administration focusing on respect and independence of the Judiciary; advising to cease temporary tenure for judges; guarantee fair proceedings to select judges; and investigate the accusations as to Government meddling with the Judicial power. Likewise in 2015, the Human Rights commission, pointed out that immediate steps had to be taken to secure and protect the judges and attorneys most total independence and impartiality guarantee that their performance stayed free of any kind of pressure and meddling. Specifically steps should be taken to arrange the precarious situation of most judges, attorneys and public prosecutors as regards to stability of their tenure.

⁷⁷ See their first report : <http://www.accesoalajusticia.org/wp/category/biblioteca/monitoreo-de-gestion-judicial/>

Regulatory framework.

Modify the four laws of "justice" with a focus on judicial independence and ensuring the existence of a "*pro cives*" judge and not pro Government.

Promulgate a code of ethics for Venezuelan magistrates and judges, according to the international guidelines of independence and security of judges.

Stop the interference of the Executive power and the "Popular" power in decisions, appointments and management of judicial resources.

Jurisprudence.

Abandon the practice of the biased interpretation recourse and the ex officio action, as mechanisms of repression and "legalization" of the governance practices contrary to the Constitution and Human Rights.

Return to focusing the law in force at the time, respecting legal security, and abandon the practice of legislating or even act as a constituent power based on judgements, violating the separation of powers and the will of the people.

Judicial management.

Reform the Judicial 2013-2019 Strategic Plan and remove from it any reference to the Government Plan, or the ideological framework of the PSUV.

Return to the public and open contests for the appointment of judges and to the constitutional rules on the appointment of judges.

Bring stability to the judge, career incentives, training to the Court and create mechanisms for its evaluation

Create an annual system of accountability with clear and comprehensive statistics of the Judicial Branch.