

The Public Ministry has been dismantled by Chavismo

Even though the National Assembly is the one that has carried with the worse part, it is not the only Public Branch that has seen how chavismo stripped it of the competences given to it by the Constitution, since the Public Ministry has also suffered a similar situation, which has made it difficult for the organism to comply with its main mission: investigate and punish those responsible of the crimes that happen in the country.

The denounce was made by Acceso a la Justicia in its investigation “Report on the Performance of the Public Ministry (2000-2018), which was made along 2019 and coordinated by Elienai González. In this study, an evaluation was made on the impact suffered by the instance after the entering into force of the accusatory system with the approval of the Organic Criminal Procedural Code (OCPC) first, and then the Magna Carta of 1999.

In the investigation it is denounced that the Public Ministry “has seen itself seriously affected in its functions, by means of “several mechanisms of legal pretense”, beginning with the reform that the COCP suffered in 2012, in which there were eliminated the articles (114 and 116) that stated the subordination of the officers of the Scientific, Penal and Criminal Investigations Body (CICPC by its acronym in Spanish to the General Attorney’s Office and the power to punish them that had the General Attorney in case they did not comply with the instructions issued by his/her office.

“These changes implied a greater autonomy and discretion of the CICPC in detriment of the Public Ministry’s authority in the management of the criminal investigation, for the power concentration on the Executive branch permeates also this delicate area”, it is denounced in the report.

Always the STJ

However, the worst hits to the instance guaranteeing the legality came of the Supreme tribunal of Justice (STJ). Thus the Constitutional Chamber in its decision number 469 of June 27, 2017, gave “procedural representation” to the People’s Defense Office in criminal cases regarding Human Rights’ violations; and also declared that this latter organism might request investigation activities to the auxiliary organs as well as promoting proofs.

“The mentioned decision, unconstitutionally gave rise to a duplicity of competences that imply a greater difficulties to adjudicate responsibilities of human right’s violations”, it is read in the report, in which it is recalled that “the work of the People’s Defense Office is not jurisdictional, is of follow-up, escorting, denouncing, surveillance, demanding of rights, in order the State agents fulfill their role”.

Weeks after, the Carta Magna interpreter in its decision 537 of July 13 of 2017 prohibited prosecutors charge people suspicious of perpetrating a crime in its offices and order them carry forward these proceedings at the judicial sees; besides, it orders judges to continue the investigations, even when prosecutors would have decided closing them for lacking of elements (that demonstrated there was a crime).

Acceso a la Justicia warned that these decisions contradict what’s established in number 3 of article 285 of the Constitution, which indicates that is a Public Ministry’s competence “ordering and managing the criminal investigation of perpetration of punishable acts to proof their perpetration with all the circumstances that might influence its qualification and author’s responsibility as well as the securing of the active and passive objects related to the investigation”.

And, lastly, in the report it is mentioned that on decision number 902 of December 14 of 2018, the Constitutional Chamber stripped the monopoly of the State criminal action from the Public Ministry, allowing victims to file its own criminal accusation, regardless of the decision of the Prosecutor to file charges or not, which is “a violation of the Constitution in its article 285, number 4, which granted this competence exclusively to the Public Ministry, (this) being a grotesque detriment to the accusatory system”.

The previous chronology reveals that the dismantling process of the organism began long before the General Attorney in exile, Luisa Ortega Díaz, broke with Nicolas maduro’s government in light of the decisions by which the top tribunal has closed the parliament in practice. But besides, it did not stopped once the Constituent (National Assembly) removed the lawyer of guarico’s descent from the position she has been occupying since 2007 and replaced her with Tarek William Saab.

Without stability

But since the Public Ministry has not only suffered a process of dispossession of competences and intervention by the “questioned” Constituent (National Assembly), but also has seen the scarce steps that had been given to secure prosecutor’s stability reverted with the stroke of a pen by its main responsible, Tarek William Saab.

In the report it is recalled that only three of the most of 2 thousand prosecutors in the country have obtained its positions via opposition contests, as ordered by the Constitution. Besides, it is denounced that Saab amended the Personnel statute of the organism at the end of 2018 to turn all employees in “personnel of confidence”. Ortega Diaz was the only authority with the justice administration system that admitted that temporariness was an issue and not only committed in 2011 with the Human Rights Council to attack that, but took some few steps in that sense.

¿And how does this affect you, Venezuelan?

The humanitarian crisis that the country is under has been caused in good measure by the decision of the authorities to violate and breach the constitutional order. Thus has denounced organizations like the Inter-American Human Rights Commission (CIDH by its acronym in Spanish). And, though the most evident expression of this rupture has been the National Assembly, which has not only been neutralized but stripped of its functions, other instances like the Public Ministry has also run a similar fate.

The legal amendments that have stripped competences to the Public Ministry make very difficult its work of fighting crime and defending citizens’ guarantees, but also its intervention in 2017 by the questioned Constituent (National Assembly) put it in a position of greater subservience to the government.