

El Salvador: Risk of Democratic Breakdown in the Face of Justice System Reforms

- *By means of reforms introduced and approved without study or debate, the Legislative Assembly provides for the immediate dismissal of judges, chamber magistrates and prosecutors over 60 years of age who's positions previously were exempt from being fired—i.e. irremovability.*
- *Reforms affect at least 156 members of the judicial career, including the judge in the El Mozote massacre case.*

Washington D.C and San Salvador, September 1, 2021 - During the plenary session of the Legislative Assembly of El Salvador held on Tuesday, August 30, pro-government deputies of the New Ideas (*Nuevas Ideas*) party introduced successive initiatives to modify the Judicial Career Law and the Organic Law of the Attorney General's Office into the parliamentary agenda. Hours later, without prior study or debate, they were approved with the vote of the ruling majority, who - during the session and later on their social media accounts - affirmed their desire to "clean up" the justice system.

The approved reforms violate basic guarantees derived from the principle of judicial independence and fiscal autonomy by providing for the immediate dismissal of judges, magistrates and prosecutors over 60 years of age or with more than 30 years of service, whose mandates were not subject to a time limit and who enjoyed the guarantee of irremovability. According to the new rules, those who have been dismissed are placed in an "availability regime" in which, by decision of the Supreme Court or the Attorney General, they may continue to occupy their positions outside the career regime.

This measure implies the **immediate removal of at least 156 magistrates and judges**, some in charge of cases of great social relevance, such as **Judge Jorge Guzmán in charge of the trial of the El Mozote Massacre case**. The reform to the Judicial Career Law also **directly violates Article 133 of the Salvadoran Constitution**, which exclusively reserves the possibility of proposing legislative initiatives related to the judiciary to the Supreme Court of Justice.

In addition to the above, the new norms grant **broad and discretionary powers to the Supreme Court or the Attorney General to decide to transfer judges and prosecutors to other territorial units or functional units** "for justified reasons of convenience of service" or "complexity or speciality of the cases". The Inter-American Commission on Human Rights (IACHR) has noted that, when based on discretionary

grounds, the removal of a judge or prosecutor from the cases he or she has been hearing or from his or her place of work "may be a reprisal for his or her decisions, and the threat of transfer also serves as a threat to the independent performance of his or her work." In this sense, the United Nations Special Rapporteur on the Independence of Judges and Lawyers has identified that these measures can be used as "covert sanctions" to pressure and harass independent judges and prosecutors.

"The reforms are aimed at removing members of the intermediate courts and the most experienced prosecutors, precisely those who could exercise internal resistance to the political co-optation of the highest authorities in both bodies," said Ursula Indacochea, director of the Judicial Independence Program of the Due Process of Law Foundation (DPLF).

The approved reforms expose El Salvador to possible democratic rupture by generating external pressures on the mechanisms of judicial control and protection of citizens' rights and liberties. Sonia Rubio-Padilla, coordinator of DPLF's office in El Salvador, said, "Both the legislative procedure and the content of the reforms violate the Constitution and international treaties signed by the Salvadoran State regarding judicial independence."

From DPLF, we **strongly reject the massive dismissal of justice operators perpetrated by the legislative body**, which not only violates their stability in office - a fundamental component of the principle of judicial independence - but also the guarantee of the citizens of El Salvador to be heard by judges appointed in accordance with previously established procedures recognized in international human rights treaties signed by the Salvadoran state.