

LEGAL UPDATE

BY ALLAN GARRO N.

Judicial System Facing Breakdown

The idea to write this article arose after watching a Documentary on the French Channel TV5 Monde for "Amérique Latine." It showed how, due to the world economic crisis of the last two years, many tenants in France stopped paying their rent. It forced many landlords to file eviction requests in Court, which took several months to get approved. Even then the legal nightmare continued since police authorities were reluctant to apply the judicial order, or will take as much as a year to do so. The documentary showed a desperate elderly woman, who lived off the rent she used to get from her tenant, in such a situation. She was then contacted by a Private Security company offering to "deal with the situation," forcing the tenant to leave the apartment in just a few days. Their methods I will leave to your imagination.

After fifteen years of practicing law, I have seen how the Judicial System has entered into a crisis situation in terms of the time Courts are taking to decide cases. All those Expats involved in any kind of Judicial Process could confirm this situation. Sometimes they think their lawyers are responsible for doing nothing, but certainly the major problems are inside the court system. And with problems, I mean specifically the time delay, because the Court has made great efforts in order to hire high quality judges. I would like to comment on some of the possible causes affecting this essential service.

Civil Cases and Collections. For decades the civil courts, as well as most courts of the country, worked on a system based on a Small Office concept. That way each civil court would have one or two judges to decide the cases, a Secretary in charge of organizing the internal work –similar to a manager, and a crew composed by less than ten assistants who handle all the daily work. The system proved to very efficient, in my opinion, until the late nineties when a new concept named Mega-Courts was introduced. It was first used in a building in Goicoechea, and consisted of one huge office where there might be as many as seventy assistants without a boss, since the Secretary was eliminated. Judges were placed in a separate office on the higher floors so they have no control at all over the office organization. The problems of a big crew of people working without a "manager," with the judges away, soon became visible. In the meantime the six Civil Courts of San Jose, working under the old system, proved to be much better in terms of efficiency.



Most cases submitted in front of the civil courts were collections based on many different documents such as promissory notes, letters of exchange, commercial invoices, credit cards, mortgages and chattel mortgages. Because of this, in May, 2008 a new law called Judicial Collections Law took effect, which came with the intention of supposedly allowing those cases be decided faster; creating Collection Courts based on the Mega-Court system. The result has been a chaos. For example, with the old system, the process of executing a mortgage, foreclosure and taking possession of a property generally might have taken less than a year; while working with the new system, the same takes between two to three years. This turns out to be unreasonable, affecting all creditors and creating a benefit to those debtors who stopped payments.

Those civil courts handling all those cases differently than collections certainly are working fast enough. Notwithstanding the foregoing cases are taking more time than expected, basically because Court of Appeals are exceeding the time to decide those appeals filed against decisions taken by Civil Courts.

Agricultural Courts. In 1982 Agricultural Courts were created with the intention of having specific courts decide conflicts between farmers and companies exercising agricultural activities. However, years later the criteria to determine the Jurisdiction was determined by the "agricultural attitude" of the land. This means that if the property in conflict was able to be used to raise crops or for forestry purposes then such conflict had to be decided by an agricultural court. This is the reason many legal issues involving properties used as second homes, tourist businesses or condo developments are discussed in front of agricultural courts. The biggest problem is that there is only one Agricultural Court of Appeals to decide ALL the appeals filed against

Continued on page 9...

decisions taken by Agricultural Courts all over the country. Once an appeal is filed it takes about 12-14 months to get a decision. Considering one single agricultural case can be in front of the Court of Appeals four or five different times, it's only necessary to do the math in order to find why those cases take sometimes as much as ten years to get finally decided.

Criminal Courts. Before 1998 the Criminal Procedures Law established a specific type of Criminal Judge named JUEZ DE INSTRUCCIÓN – Instruction Judge - to handle the investigation of crimes. Under that system the Prosecutors used to act as a kind of Assistant to the Judge, helping him to handle the investigation. In January, 1998 a new Criminal Procedures Law took effect that basically was copying those systems used in other countries, placing the entire responsibility of the investigation on the General Prosecutor Office –here named Ministerio Público- and shortening the terms of the statute of the limitations for all crimes. Criminal Judges will act basically as Judges of Guaranties, but will not direct the investigation anymore. Soon this system showed that Prosecutors did not have the required organization and budget to fulfill their duties in shorter times as the new law established. Because of this, many victims of crimes have seen how criminals get released because of the statute of the limitations.

Other Problems. The Court has an Internal Affairs Office named INSPECCION JUDICIAL – Judicial Inspection - that

always tries to maintain and enforce the security of the right to Prompt Justice, having disciplinary faculties over all judicial employees. However, their faculties have been seriously limited by decisions recently taken by Constitutional Court arguing the Judge Independence Principle. This means now they have little control on judges' actions and decisions.

Court is also making big efforts to improve services by investing lots of money in Technology, making it now possible to receive notifications via email or file lawsuits through the Internet. But this has not improved the service, and users still feel frustrated. Part of their current programs include trying to change procedure from written to oral. Even though oral procedures are better than those written, they are also more expensive; and having a limited budget, court's management needs to seriously study if this is the best way to go or it is better to keep written procedures that can be decided faster.

The main purpose of this article is to be a constructive criticism in order to explain to the international community some of the possible reasons currently affecting our Judicial System, and in the meantime to encourage those Officers in charge of court's administration to keep doing their best in order to grant the right to prompt justice granted on article 4 of the Constitution.

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