

## DESCRIPTION OF THE JUDICIAL SYSTEM OF COSTA RICA

As this topic is so vast, the following is merely a brief overview of the structure and operation of the Judicial Branch in Costa Rica.

The Judicial Branch, Supreme Power of the Republic, plays a very different role from the Legislative and Executive Branches, and this vital role is established in Articles 9 and 152 of the Constitution. The Judicial Branch is governed by the legal guidelines set forth in the Organic law of the Judicial Branch, Law No. 7333 of May 5, 1993:

“...Art. 1.- The Supreme Court of Justice and all other courts established by law constitute the Judicial Branch. In addition to the functions assigned to it by the Constitution, the Judicial Branch shall conduct trials on civil, criminal, juvenile criminal, commercial, labor, and administrative cases regarding property, constitutional, family, and agrarian matters, as well as others established by law. It shall make final decisions on such matters and carry out such decisions, with the help of law enforcement if necessary.”

The following Article reinforces fulfillment of this task:

“...Art. 2.- “The Judicial Branch is only subject to the Constitution, the law, and its own decisions regarding matters within its competence. No other responsibilities can be imposed on it except those expressly indicated by legislative provisions. However, the superior authority of the Court shall prevail over performance of its duties to ensure that the administration of justice is swift and complete.”

-Spheres of the Judicial Branch

In order to fulfill the fundamental objective of administering justice assigned to it by the Constitution, the Judicial Branch established a structure divided into three different spheres: the jurisdictional sphere, the auxiliary sphere of justice, and the administrative sphere.

### 1. The Jurisdictional Sphere

This sphere is comprised of the offices in charge of administering justice. Here we refer to the Justices who sit on the Supreme Court, the Cassation Courts, and the various judges working in different courts.

It is headed by the Supreme Court, the court at the top of the country's hierarchy. All tribunals and courts in the country fall under that Court. It is organized according to three factors: subject matter jurisdiction, territorial jurisdiction, and the amount of money involved. These factors determine the court in which a case is heard. Territorial jurisdiction and the amount of money involved are established by the Supreme Court of Justice.

There are 22 justices on the Supreme Court, distributed as follows: five in each of the three Cassation Courts, and seven in the Constitutional Court. They are all appointed by the Legislative Assembly for eight-year terms.

#### a) Chambers of the Supreme Court

The Supreme Court of Justice has four Chambers, three are Cassation Courts and one is the Constitutional Court.

As for the different specialties of each Court, the general function of the first three is CASSATION. In other words, these review the decisions of the three-judge courts to ensure that they are legal in terms of procedure and merits, thus standardizing criteria and establishing jurisprudence.

Essentially, the First Court hears cassation appeals and requests for review of regular and abbreviated trials in civil, commercial, and administrative litigation matters. It covers agrarian issues as a court of third instance. It also carries out judgments made abroad.

The Second Court hears cassation appeals and requests for review of regular trials or abbreviated family law and succession law trials. It also covers labor jurisdiction as a court of third instance.

Finally, the Third Court hears cassation appeals and requests for review on criminal matters and cases against members of the highest authorities.

The Constitutional Court is not a cassation court, but rather a body which monitors compliance with the Constitution.

- The Constitutional Court

Often called the Fourth Court though its proper name is “Constitutional Court,” its role is to oversee protection of the fundamental rights enshrined in the Constitution and international law instruments ratified by Costa Rica, so as to ensure that these standards are met. This Court is in charge of protecting and preserving the principle of constitutional supremacy whereby no rule, treaty, regulation, or law within our legal order may be contrary to the Constitution. The Court provides services 24 hours a day, all year long, so that it can receive petitions at any time. It is located on the first floor of the Supreme Court building in San José.

The principle of constitutional supremacy is essentially protected through three kinds of remedies:

- *Habeas Corpus*

This is based on Article 48 of the Constitution, which guarantees personal liberty and humane treatment. This implies that no one, without just cause, may be deprived of the freedom to move, remain in, enter, or leave the country. Any individual may file a writ of *habeas corpus* without the assistance of a legal advisor or attorney. It may also be filed on one’s own behalf or on behalf of another person.

- *Amparo*

This also originated in Article 48 of the Constitution, which establishes the right of all persons to use this remedy to maintain or reinstate enjoyment of other rights (except that of personal liberty protected by *habeas corpus*), enshrined in the Constitution. In this case, as with the above, one does not require the assistance of an attorney to file a writ of *amparo*. The distinguishing feature of this remedy is that it can be filed among private parties, as long as one holds a position of superiority.

- Appeal based on unconstitutionality

This can be filed against any action, rule, provision or law contrary to the Constitution. It is also allowable to question the jurisprudence of the Courts of Justice. The Constitutional Court also takes inquiries about the constitutionality of bills before congress in order to determine whether they contain any unconstitutional elements before they are enacted into law. And it receives inquiries from the Courts when they have concerns about the constitutionality of a given rule or regarding actions that occur during the different stages of a trial. Appeals based on unconstitutionality require more formal presentation. The jurisprudence of the Constitutional Court is binding *erga omnes*, except upon itself.

2. Auxiliary sphere of justice

This is comprised of the offices or departments of the institution whose job is to help administer justice. The Organic Law of the Judicial Branch establishes that the following offices shall serve as auxiliaries in the administration of justice: the Public Ministry, the Judicial Investigation Agency, the Department of Public Defenders, the Judicial School, the Electronic Center for Jurisprudence Information, and the Judicial Archive and Registry.

a) Public Ministry

The Public Ministry plays the role of asking the Courts to apply the law by filing criminal actions and conducting preliminary investigations of crimes. However, when so empowered by law and with prior authorization from above, the representative of the Public Ministry may ask for criminal prosecution to be limited or dispensed with completely, or that it be limited to one or several infractions or that it be limited to only some of the individuals who participated in the acts. This same entity intervenes in the criminal prosecution, and on behalf of the victim in civil proceedings when appropriate, and assumes the other responsibilities assigned to it by law.

b) The Victims' Advocacy Office

This office provides the victims of crimes with the services of a legal representative to help them obtain indemnification for any damages and suffering incurred. The Victims' Advocacy Office is an entity of the Public Ministry which opened its doors on January 1, 1998

when the Code of Criminal Procedure went into effect. The professional services rendered by this office are completely free of charge. The victim is assigned an attorney, who conducts the necessary transactions to get the defendant or his representative to pay for the damages.

c) Victims' Information and Guidance Office

This Office was created to guide victims and minimize any problems for them during the course of the trial. It seeks to provide assistance as quickly as possible, because if the help is late in coming the situation of the injured parties is aggravated, which is precisely what this Office seeks to avoid. It also is part of the Public Ministry.

d) Judicial Investigation Agency

This Agency was created in 1973 as an auxiliary body of the criminal courts, under the Public Ministry. Its main role is discovery and scientific verification of crimes and their alleged perpetrators. The Organic Law governing it states that it shall act on its own initiative, in response to complaints, or by order of the competent authority investigating crimes against society, and that it will identify and preventively detain the alleged perpetrators. It also seeks to gather, ensure, and scientifically organize the evidence and background information necessary for the investigation.

e) Public Defenders

The role of the Public Defenders is to defend in court all defendants or criminal detainees requesting their services, as well as the parties in non-criminal agrarian trials when so requested. When such an attorney is assigned to work for the defense, the services are free of charge for those who cannot afford them.

f) Judicial School

This was created more than 35 years ago. The Judicial Branch of Costa Rica has a strong and organized school to provide very important support for the efficient and effective administration of justice. Its general purpose is to “develop specialized training programs aimed at judicial servants, which will allow for comprehensive strengthening of their knowledge and

attitudes for the proper performance of their duties, thus contributing to the swift and complete administration of justice.”

#### g) Electronic Center for Jurisprudence Information

The importance of jurisprudence is seen in the fact that this is the living law and a useful tool for making the right decision. For this reason, the Electronic Center is in charge of the important work of processing, analyzing, and legally classifying the relevant decisions of the Cassation Courts and the three-judge tribunals. The purpose is provide this information to judicial officers, students, attorneys, and the general public when requested through various means: in-person service, an automated system, judicial journals, bulletins, technical statements, indices, and faxes.

#### h) Judicial Archive and Registry

The job of the Registry is to record the criminal backgrounds of the residents of the nation. The Archive holds the closed and abandoned files, as well as any documents and books assigned to it by the Full Court.

### 3. Administrative Sphere

The administrative sphere fulfills the important role of providing support for the normal operation of the system of justice. It is comprised of the Superior Council, in charge of managing the resources of the institution, and is assisted by the various administrative departments, headed by the Executive Management, the Personnel Department, the Procurement Department, the General Services Department, the Financial Accounting Department, etc.