

JUSTICE ADMINISTRATION SYSTEM

The Judiciary

Judicial power is exercised by the Supreme Court of Justice and other lower courts established by Congress within the national territory (art. 108). In no circumstances may the President exercise judicial functions, assume jurisdiction over pending cases or reopen cases that have been closed (art. 109).

Prior to the reforms, judges were appointed by the Executive with the approval of the Senate. According to the new constitutional text and Law 24.937, appointments are based on a binding list of three candidates proposed by the Council of the Magistrature (art. 114). This Council is reconstituted periodically in such a way as to achieve balanced representation of elected political bodies, judges from all the courts, and lawyers on the federal register, as well as other persons from the academic and scientific fields, the size and structure of the Council being spelled out in the special law establishing it.

The judges of the Supreme Court and lower courts retain their posts as long as they maintain a good standard of conduct (art. 110). They may be removed from office by the decision of an impeachment jury composed of legislators, magistrates and registered lawyers (art. 115), on grounds of poor performance or professional misconduct or for ordinary offences (art. 53).

It is the responsibility of the Supreme Court and lower federal courts to hear and decide all cases relating to matters governed by the Constitution, the laws of the Nation or treaties with foreign nations; the Supreme Court exercises jurisdiction over appeals in accordance with the rules and exceptions prescribed by Congress.

The foregoing notwithstanding, the Supreme Court has primary and exclusive competence in: cases concerning ambassadors, government prosecutors and foreign consuls; cases involving the admiralty and maritime jurisdiction; matters in which the Nation is a party; and cases arising between two or more provinces, between one province and the residents of another province, between the residents of different provinces, and between one province and its residents against a foreign State or citizen.

Under the Argentine legal system, the administration of justice is a power shared by the Nation and the provinces. Articles 5 and 123 of the Constitution provide that each province shall enact its own constitution in accordance with the principles, declarations and guarantees of the supreme law, "which ensures its administration of justice". The provinces elect their own officials and judges, without intervention by the Federal Government (art. 122). At the same time, article 31 of the Constitution provides that the Constitution itself, the laws enacted by Congress in pursuance thereof, and treaties with foreign Powers are the supreme law of the Nation, and the authorities of each province are bound thereby, notwithstanding any provision to the contrary which the provincial laws or constitutions may contain.

The Judiciary of each province is responsible for the administration of ordinary justice within that province's territory, applying the codes mentioned in article 75, paragraph 12, namely, the Civil, Commercial, Criminal, Mining, Labor and Social Security Codes - depending on the jurisdiction under which matters or persons lie.

As to national justice, under article 116 of the Constitution the Supreme Court and the lower federal courts hear and decide all cases relating to matters governed by the Constitution and the laws of the Nation, except those matters falling to the provincial jurisdictions. In these cases, according to article 117, the Supreme Court exercises jurisdiction over appeals.

The *Ministerio Público* (“Public Ministry” or Attorney General’s Office)

The *Ministerio Público* has been part of the justice administration system since the national institutions were organized (1853-60), and was incorporated into the national constitution in 1994. The constitutional reform that took place that year included the *Ministerio Público* among the authorities of the nation (together with the Executive Branch, the Legislative Branch and the Judiciary) as an independent body with functional and financial autonomy (article 120).

According to the Constitution, the function of the *Ministerio Público* is to promote justice, to uphold the law and the general interests of society. It comprises the Public Prosecution Office, headed by the Prosecutor General (*Procurador General de la Nación*), and the Public Defense Office, headed by the Defender General (*Defensor General de la Nación*). Its members enjoy functional immunity and salary protection (article 120)

The regulations for implementing this constitutional clause were passed by Congress in 1998 in the form of the Organic Law for the Federal Attorney General’s Office (Law 24,946). That law enshrines the principles of objectivity, hierarchy, unity and coherence of action, fixes the number of prosecutors and defenders who will work, respectively, under the Prosecutor General of the Nation and the Defender General of the Nation, and regulates the functions of each, as well as other aspects related to the institution’s organization and operations.

Pursuant to article 5 of that law, the Prosecutor General of the Nation and the Defender General of the Nation are to be appointed by the President, with the consent of the Senate through a vote of two-thirds of members present. The law also extends this requirement to other prosecutors and defenders, but in their case Senate concurrence may be expressed by a simple majority of members present. In these cases, moreover, the President must select (and the Senate must approve) the person to be appointed from a shortlist of candidates submitted by the Prosecutor General or the Defender General, following a public competition. The law also establishes the mechanism of impeachment, stipulated in article 53 and 59 of the Constitution, for the removal of the Prosecutor General and the Defender General, and for the remaining prosecutors and defenders, which provides for intervention by an impeachment jury comprising former Justices of the Supreme Court or former Prosecutors or Defenders General, one designated by the President, another by the Senate, and the third by the Supreme Court (articles 18 ff).

Article 23 governs relations with the executive and legislative branches, and provides that the Public Ministry shall deal with the first through the Ministry of Justice, and with the second through a bicameral commission, the composition and functions of which must be determined by the Chambers of Congress.

The Public Ministry of the Nation acts in those cases that fall under the jurisdiction of the national Judiciary.

According to the federal regime of State organization, each province is empowered to create its own Public Ministry as part of the local justice administration system and to define its institutional placement (independent body, part of the Judiciary, or part of the executive branch).