

The questionable system of appointing judges. By Francisca Werth Wainer

Ex-Ante



Whatever is done, we must make progress in achieving a more transparent system, but also in subsequent control mechanisms that severely punish those who exercise their work moved by their private interests, favours owed, or who have reached their positions through false transactions that compromise their independence.

At this point, I don't think I'm wrong to say that even those of us who have been closely following the developments and issues that have arisen from the well-known Audios case have not been somewhat lost amidst all the WhatsApp messages, screenshots offering doctorates, and text messages asking for and offering support to be appointed to important positions that we thought we had achieved through merit.

Probably, as President Lagos would have said, Mrs. Juanita, whose house was flooded in the south, is not very interested in this controversy, which at times seems to have little worth. But behind all this chaos, there are a number of fundamental issues that need to be reflected upon.

The first is why this is important to our rule of law. The work that the courts do is fundamental because that is where we as a society have decided that the disputes that we have in any area of our common life should be resolved.

If we have a problem with the tenants of our house and we cannot come to an agreement, we go to court and file a lawsuit. If a parent is not paying child support, we go to a family court judge who orders the responsible party to pay. Or if we are victims of a crime, we have at least some recourse knowing that a prosecutor will investigate and prosecute the person who unlawfully attacked us.

And so we could go on with many other examples. But in each case, at the end of each of these stories, there will probably be a judge who will rule and have the power to enforce the law in that particular case. And after the trial judge, each party will have recourse to one of the appellate courts and then to the Supreme Court to raise their objections to the decision and to seek a resolution of their problems.

In all of these examples, those who seek this judicial solution have the right to demand that the judge and the tribunal that he or she hears and decides their problem be independent of any conflict of interest and be guided by no other criteria than that he or she be legally and professionally qualified. It is these two factors - independence and suitability - that are at risk if the person who becomes a judge in such an important position cannot unquestionably guarantee them.

The powers granted to the courts by the Constitution are so broad that they extend to the exclusive power to hear, decide and execute decisions in civil and criminal matters that they must hear, to be able to give orders to the public forces and to ensure that no authority, not even the President of the Republic, can enter to qualify the basis, the possibility, the justice or the legality of what is decided by our judges. We must ensure that these judges are honest, independent and capable of exercising the powers granted to them by the Constitution.

What to do, then, when all we see is more and more evidence, which seems to be the tip of the iceberg rather than a view of the whole glacier, that our

system of appointing authorities cannot guarantee these two indispensable qualities that judges must have?

Immediately, there are expert opinions, such as the proposal of a group that includes the former president of the commission of experts of the last constituent process, Verónica Undurraga, who rightly proposes reforms to the system of judicial appointments. In the two constituent processes that Chile has gone through, proposals have been made to change this system and the government of the judiciary.

In general, they all point to greater transparency in the processes and greater guarantees that the best people will be appointed. Many point to the need to remove the Senate from appointments, thereby reducing the scope for political interference.

The aim is to ensure that the ability to interpret and apply the law in the specific case is assessed, that there is transparent and sufficient information about the candidates for those who have to make the appointments, and that there are different ways of achieving autonomy. In the case of appointment commissions, it is proposed to open the proposal to technical experts from outside the judiciary and to limit the time limit for the President to make the appointment, in order to reduce the risks of intense lobbying in favor of a candidate.

However, we know that there will never be a perfect mechanism. Every system is subject to pressures, and all those involved in the processes in one way or another will have conflicts of interest.

Whatever is done, we must make progress in achieving a more transparent system, but also in mechanisms of ex-post control that will severely punish those who carry out their work motivated by their private interests, by favors owed, or who have reached their positions through shady dealings that compromise their independence.

That is why we should care about this issue, because any of us may need an impartial and competent judge to solve our problem with our landlord or to prosecute someone who has committed a crime and harmed us. The work of judges is crucial to our lives in society and to the proper functioning of democracy. Not everything is good enough to get into office, and those who seek office should be the first to know this and to make it count.