

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

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Volume 6 | Issue 1

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2023

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# Independence and Impartiality of Officials who Administer Justice

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## ABSTRACT

*This article presents the case López Lone vs Honduras, where violations of the independence of Honduras judges were evidenced, evaluating the context and importance of this independence as one of the values required of judges and, for this reason, are regulated in the Bangalore Principles on the Judicial Conduct which consolidates democracy in a society.*

**Keywords:** *judicial independence, case Lopez Lone, Bangalore Principles.*

## I. INTRODUCTION

The Inter-American Court of Human Rights, in the case of the Constitutional Court vs Peru<sup>4</sup>, established that "(...) one of the main objectives of the separation of public authorities is the guarantee of the independence of judges and, for this purpose, the different political systems have devised strict procedures for both their appointment and for their dismissal." In fact, a democratic state is characterised because its powers (executive, legislative and judicial) are clearly defined, and each power does the role that corresponds to it without interference or limitations so that there is no supremacy of one over the other, but rather a balance of powers - since past experiences have shown that concentration of power or absolute power in society, generates authoritarianism

It is what is known as the principle of separation of powers that is essential in the rule of law. In the United States of America, for example, it is known as the check and balance, which establishes the balance of powers, and in the Peruvian system, it is regulated in Title IV of the Political Constitution of Peru, which establishes that the structure of the State is composed of the Legislative Power, the Executive Branch, and the Judiciary.

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<sup>4</sup> Judgment on Merits, Reparations and Costs. 3 January 2001, paragraph 73.

It is important that in a democratic system, it is guaranteed that the judicial function - by which justice is administered, conflicts of interest are resolved in its various variants, and therefore, an important role is fulfilled that consolidates all democracy - is carried out independently and free of external subjections. Thus, judicial independence constitutes a right of judges, and at the same time, a necessity of society, to resist the onslaught of other powers and thus guarantee the balance of powers. One of the essential aspects of independence is the guarantee of its access on equal terms and permanence and stability in office.

In the present case, the judgment of the *López Lone vs Honduras* case will be addressed, in which the Inter-American Court of Human Rights concluded that the judicial independence of the judges of Honduras was affected, to whom disciplinary measures were applied (three of whom were dismissed from their positions and one of them was initially dismissed, but then replaced), for having expressed his rejection of the coup d' State, and even the General Assembly of the OAS ordered to suspend the State of Honduras from its right to participate in the Organization of American States, as long as the democratic order was not established.

## **II. DEVELOPMENT**

It should be noted that the facts that motivated the *López Lone vs Honduras* case, were that the then constitutional president of the State of Honduras, José Manuel Zelaya Rosales, approved several decrees in order to convene a national poll on the possibility of incorporating a fourth run in the elections, to decide on the convening of a constituent national assembly that would approve a new constitution. Faced with this situation, a Court of Letters ordered the suspension of the popular consultation as well as any administrative act that had a similar purpose, despite which the then president decided to continue promoting the national survey, so at this juncture, army members entered his residence, arrested him, took him to an air base and transferred him to Costa Rica. Subsequently, it was announced that such capture had been requested from the Supreme Court of Justice by the Attorney General for alleged crimes related to treason, as well as in a session of the National Congress the "alleged resignation letter" of the imprisoned president was read, so the President of Congress was immediately appointed as Constitutional President of the Republic.

Faced with these facts, the Supreme Court of Justice issued several public statements, in which it stated that both police and judicial proceedings had taken place within a legal framework, and finally affirmed that in this situation there had been a "constitutional succession", which notoriously contrasted with the international rejection that on the contrary, condemned the acts aroused in Honduras, and described them as a coup d'état, which therefore warranted the return

of President José Manuel Zelaya Rosales, as constitutionally elected president.

Since judges Adán López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chéves de la Rocha, and Ramón Enrique Barrios Maldonado, all members of the Association of Judges for Democracy - who as an association issued statements sanctioning the coup d'état and exhorting to return to the democratic state - were disciplinarily sanctioned by the Supreme Court of Justice with the impeachment measure -which was revoked only with respect to Ramón Enrique Barrios Maldonado-, for having shown in different ways, his rejection of the actions of the coup d'éta

Such is the case that Adán Guillermo López Lone, participated in a peaceful social march in which the coup was questioned and he was reprimanded by the police by means of force, from which he was injured; For her part, Tirza del Carmen Flores Lanza filed legal actions for the situation, such as a request for Amparo in favor of President José Manuel Zelaya Rosales, as well as a criminal complaint against the members of the Honduran State Army and other officials who participated in the government coup; in turn, Luis Alonso Chéves de la Rocha, during a public demonstration against the coup, questioned police brutality, as a result of which he was arrested and assaulted; while Ramón Enrique Barrios Maldonado, gave a conference as a professor of Constitutional Law about the political situation, as a result of which an article was published with the name "There was no constitutional succession", in which it was pointed out that there had been rather an illegitimate military coup.

In all cases, the Supreme Court pointed out that the judges had carried out conduct inconsistent with their duties since they issued opinions of a political nature and participated in collective marches of a political nature, which was not compatible with their position.

In this regard, the Inter-American Court of Human Rights concluded that the disciplinary measures imposed sought to stop the internal rejections of the coup d'état - which according to the American Commission, when making its visit to the same state and issuing its report, pointed out that most of the institutions had collusion to endorse the coup, and that on the contrary, the organizations, leaders, and officials who Likewise, the Inter-American Court of Human Rights concluded that although the position of Judge requires the limitation of certain behaviors or rights in normal situations, nevertheless, in "exceptional" situations, such as a coup d'état and alteration of the democratic system of society, it is rather a moral duty and an imperative for those who impart justice and ensure the respect for the Constitution, to defend precisely Position and with his duties citizens,

In this context, it must be taken into account that the independence of judges constitutes one of the values that are required of magistrates, and that, for this reason, they are regulated in the

Bangalore Principles on Judicial Conduct, as well as they are positive in our national regulations, since article 139 of the Political Constitution of Peru establishes that one of the principles of the administration of Justice is "In Being that, as the Inter-American Court of Human Rights has maintained in the Apitz Barbera and others case ("First Court of Administrative Litigation") vs. Venezuela<sup>5</sup>, judicial independence has a double aspect "institutional face, that is, in relation to the Judiciary as a system, as well as in connection with its individual aspect, that is, in relation to the person of the judge in particular

Likewise, the Inter-American Court of Human Rights, in turn, has established that the independence of any judge entails as requirements: 1) that there is an adequate appointment process; 2) that there is an established duration in office; and 3) that there is a guarantee against external pressure<sup>6</sup>.

In this way, judicial independence is broad, since it does not only cover the individual position that the magistrate adopts in the cases in his charge, but also covers the relationship that he has as part of an integrated system (Judicial Power), and in general of the social network (the rest of the system and the powers that make it up), so independence must ensure that a judge must issue. Therefore, it is essential that in addition, permanence in the office is guaranteed, and that it is not subject to reprisals from other powers for the decisions it takes and that it does not suit its interests (in our national reality, for example, we have the case of the Constitutional Court vs. Peru, in which the IACHR concluded that the independence of the judges of the Constitutional Court who were dismissed in an impeachment trial in charge of Congress was affected, for declaring the unenforceability of the law that would allow the re-election of Alberto Fujimori Fujimori).

Being that in the above case, it was warned that the independence of the judges of Honduras was violated, because by defending constitutional supremacy and rejecting the constitutional rupture caused by the coup d'état, they were deposed from their positions in procedures that did not guarantee due process and in which they also did not provide effective mechanisms to challenge the decision, with which they violated one of the basic in office and if it would be subject to the adverse or favorable decisions issued by the judges, then the decisions would not obey the law and the facts of the case, but to the interests of other powers that could decide whether or not the judge who decides remains in office.

Likewise, it must be taken into account that the basis or prerequisite for judicial impartiality is

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<sup>5</sup> Preliminary objection, Reparations and Costs. Judgment of August 5, 2008, paragraph 55.

<sup>6</sup> Judgment on Merits, Reparations and Costs of January 31, 2001, paragraph 75.

independence, therefore, impartiality advocates that in the controversial case, it is resolved in accordance with the rules (the law, the Constitution, and the International Treaties), and not subject to prejudices, preferences, animations or other interests, therefore guarantees a fair decision valuing the facts and the norm; however, if there is no of another, based not on the case, but on the pre-established reasons (interferences) that condition independence and therefore impartiality.

It is important then, that in a rule of law the division of powers is guaranteed, through respect for the judicial function and its independence as a basic pillar for the correct performance of its work, in order to strengthen public confidence in the judicial system, since lately, as a result of the exposure of various media cases of corruption in the highest positions in the justice system (for example, the case of the in exchange for their decisions or behaviors through the position exercised and the privileged position it held to decide), we have seen how the confidence of the general population and procedural subjects in particular, of the correct administration of justice, has been undermined, so it is an inescapable duty of judges and all those who are part of the justice system, to contribute through their daily actions and daily decisions, in which the other powers of the state, must respect the framework of the competences of each power, and therefore, respect and make prevail what in practice guarantees such values, one of them being the permanence in office, which is removable only through the pre-established procedures and in respect of due process.

### **III. CONCLUSIONS**

It is important for the Democratic State of Law that there is the separation of powers so that there is a balance or balance of power and it is not concentrated in one, because it generates authoritarianism in society.

To guarantee the separation of powers, it is essential that those who administer justice can do it independently and impartially, that is, without interference from external pressures either from the same institution or from other powers, as well as without preferences, prejudices or upturns. For there to be impartiality in judicial decisions, it is a prerequisite or it is the basis for it, that there is independence, because if there is no independence (there are pressures, conditions, etc.), then there will hardly be impartiality because it will be resolved in favor of those who exercise these behaviors that condition the decision and therefore the judicial work.

It is important and of the utmost importance that independence and impartiality are guaranteed in the judicial work since this generates confidence in the citizenry in general and in the procedural subjects in particular in the administration of justice, which consolidates democracy

in society since it strengthens the Judiciary as one of the powers of the rule of law.

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